

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS - CRIMINAL TERM - PART 37

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

JOSE FUENTES,

DEFENDANT

-----X
Ind. #2465/04

Jury Trial
320 Jay Street
Brooklyn, New York
10/25,26,27,28,31, 11/1,2,3/05
Volume I (10/25-28/05)

B E F O R E:

HONORABLE PLUMMER E. LOTT,

Justice.

- CONFIDENTIAL -
NOT FOR PUBLIC INSPECTION
(§ 50-b Civil Rights Law)

A P P E A R A N C E S:

OFFICE OF CHARLES J. HYNES, ESQ.,
DISTRICT ATTORNEY KINGS COUNTY

By: MISS GREGORY, ESQ.,
Assistant District Attorney
For the People

JOHN M. RODRIGUEZ, ESQ.,
21 East 40th Street,
New York, New York
Attorney for Defendant

TRANSCRIPT SERIAL#

BOX #

SYS. ID#

Sys # 15753

KENNETH LETTS
OFFICIAL COURT REPORTER

1 THE CLERK: This is calendar number two, under
2 Indictment 2465 of 2004, Jose Fuentes.

3 Defendant's incarcerated, produced and present
4 before the Court.

5 Counsel, your notices.

6 MR. RODRIGUEZ: John M. Rodriguez, 21 East 40th
7 Street, New York, New York, 10016.

8 Good morning, your Honor.

9 MS. GREGORY: Miss Gregory for the office of the
10 district attorney.

11 Good morning, your Honor.

12 THE COURT: This case was sent here for trial.
13 Before I start, any chance of a disposition?

14 MR. RODRIGUEZ: There is, your Honor. May we
15 approach?

16 THE COURT: Yes, sir.

17 (Off-the-record bench conference.)

18 THE COURT: Miss Gregory, you've given the Court
19 a copy of a witness list.

20 Mr. Rodriguez, have you seen it yet?

21 MR. RODRIGUEZ: I have not.

22 THE COURT: Miss Gregory, do you have an
23 additional copy?

24 MS. GREGORY: Yes, your Honor.

25 (Handed to Mr. Rodriguez.)

1 THE COURT: Mr. Rodriguez, are there any names
2 you wish to add to this list?

3 MR. RODRIGUEZ: I do. I wish to add Aubry
4 Weekes.

5 THE COURT: Spell that, please.

6 MR. RODRIGUEZ: A-U-B-R-E-Y W-E-E-K-E-S.

7 THE COURT: Anybody else?

8 MR. RODRIGUEZ: No, I don't think so, your Honor.
9 That's it.

10 THE COURT: Miss Gregory, how long do you think
11 your direct case is going to be, ma'am?

12 MS. GREGORY: No more than three-and-a-half days,
13 I would think.

14 THE COURT: Okay. So if we pick a jury by
15 tomorrow, you can open Thursday?

16 MS. GREGORY: Right.

17 THE COURT: It will only be a half a day Friday.

18 And counsel, how soon -- let's assume that she's
19 through by no later than Friday half-day, what can you do?
20 Can you get your case in the 31st?

21 MR. RODRIGUEZ: Can I get my case in the 31st?
22 Yes, sir, sure.

23 THE COURT: All right. So, I can tell this jury
24 they can expect this case to last about a week of testimony
25 and I should be able to give it to them no later than

1 Tuesday the 1st?

2 MR. RODRIGUEZ: I think that that's fair.

3 THE COURT: Any Sandoval, ma'am?

4 MS. GREGORY: Yes, your Honor.

5 Your Honor, should the defendant testify in this
6 case, the People would like to cross-examine him on two
7 prior convictions, as well as the underlying facts and
8 dates of those convictions.

9 THE COURT: What's the first?

10 MS. GREGORY: The first conviction is April 7th
11 of 1999. The conviction was for an attempted assault in
12 the third degree.

13 THE COURT: Yes, ma'am. What happened there?

14 MS. GREGORY: And that was the incident that
15 happened on January 1st of 1999.

16 THE COURT: What did he do?

17 MS. GREGORY: The defendant went to a New Year's
18 Eve party uninvited. He got into a physical altercation
19 and he hit the complainant with a baseball bat, requiring
20 the complainant to receive medical attention at Nassau
21 County Medical Center.

22 THE COURT: He entered a plea of guilty to that?

23 MS. GREGORY: Yes, your Honor.

24 THE COURT: What's the other one?

25 MS. GREGORY: And the other is a June 24th of

1 2003 conviction. It was, the conviction was for an
2 attempted robbery in the second degree.

3 The defendant and his brother on May 1st of 2003
4 entered a gas station. They pushed the gas station
5 employee to the ground. The defendant's brother choked the
6 complainant while the defendant hit the complainant in the
7 head with a rock.

8 Both of the defendants, this defendant as well as
9 his brother, demanded the money from the complainant, which
10 they took. The complainant needed 18 stitches to the head.
11 And when the defendant and his brother were apprehended,
12 his brother was in possession of the stolen money and this
13 defendant was in possession of a knife.

14 THE COURT: And your basis for suggesting that I
15 allow you to do this is what? His willingness to place
16 his interest above that of society?

17 MS. GREGORY: That's correct, your Honor.

18 THE COURT: Anything else?

19 MS. GREGORY: No, your Honor.

20 THE COURT: Any other basis?

21 MS. GREGORY: No.

22 THE COURT: Mr. Rodriguez.

23 MR. RODRIGUEZ: Yes, your Honor.

24 THE COURT: Do you want to be heard?

25 MR. RODRIGUEZ: Yes, your Honor. We'd object,

1 your Honor.

2 The nature of the charges against my client in
3 this case, being a violent nature, and with the prior
4 charges, I think it would serve no purpose except to
5 inflame the jury, to prejudice the jury. It would serve no
6 purpose other than to preclude him from being able to
7 testify in this case, should that be something that we
8 desire to do.

9 THE COURT: So what are you suggesting? That he
10 not be questioned about the convictions and the underlying
11 facts, or just --

12 MR. RODRIGUEZ: No, no. The underlying facts,
13 your Honor. I mean, I think that -- I mean, I'm not going
14 to say it's inappropriate that the jury know that he has
15 been convicted of a prior felony and prior misdemeanor.
16 But I think the underlying charges will so prejudice him in
17 this case that it would prevent him from testifying in a
18 case where it's very important that he testify.

19 THE COURT: Okay. I'm sorry. She wanted to
20 bring out the fact of the conviction as well as the
21 underlying facts. Are you opposed to any mentioning of the
22 conviction and underlying facts, or just the conviction
23 you're saying that -- I mean the underlying facts shouldn't
24 be brought out?

25 MR. RODRIGUEZ: Your Honor, I'm opposed to any

1 bringing up of anything. But, your Honor, I think in the
2 spirit of fairness that the Court may want to consider just
3 allowing the district attorney to go into the convictions,
4 as opposed to the convictions and the underlying facts as
5 well.

6 THE COURT: Well, the Court will not allow her to
7 bring out the underlying facts. While the conduct does
8 indicate a willingness on his part to deliberately place
9 his self-interest above that of society and I think the
10 jury needs to know at least that, in terms of the
11 conviction, anything about the underlying facts is
12 precluded, unless somehow the defendant opens the door.

13 Anything of an evidentiary nature, Miss Gregory,
14 you want to raise?

15 MS. GREGORY: Your Honor, I'd like to put -- I
16 have a packet of Rosario for Mr. Rodriguez.

17 THE COURT: Okay. We'll get to that in a moment.
18 Are there any evidentiary issues at this point
19 that you think may be problematic during trial?

20 MS. GREGORY: No, your Honor, I don't think so.

21 Well, what we did, this case involves a DNA
22 sample, which connected the defendant to a past crime. So
23 it's a sample that was taken from him due to a conviction.
24 So Mr. Rodriguez and I were discussing the parameters
25 around which the jury would hear about how this sample was

1 taken from him.

2 THE COURT: How does it even become an issue?
3 Can't you just simply say that they had a known --

4 MS. GREGORY: Sample.

5 THE COURT: -- sample?

6 MS. GREGORY: Which that's what I've done in the
7 past.

8 THE COURT: That was submitted, without any
9 mentioning of anything.

10 MS. GREGORY: Exactly.

11 THE COURT: Unless that's going to be your
12 defense?

13 MR. RODRIGUEZ: Well, this is one of the motions
14 in limine I was going to bring forward. The problem is in
15 today's world -- I haven't really thought how it should
16 come out, and I was hoping that we would be able to work
17 that out in court today, because of the type of
18 proliferation of TV shows and DNA samples and the fact that
19 everyone is aware in this state, most jurors are aware in
20 this state if you're incarcerated that a DNA sample is
21 taken.

22 THE COURT: I understand that. But what I'm
23 saying at this point is I'm prepared to not allow any
24 evidence of that at all.

25 MR. RODRIGUEZ: Okay.

1 THE COURT: And just simply Miss Gregory will
2 indicate at some point in time to her examiner that he
3 compared a known sample of the defendant with that of
4 whatever was found at the scene and ultimately his
5 conclusions as to that.

6 MR. RODRIGUEZ: That's acceptable.

7 THE COURT: The only way that it can be made
8 known to the jury that it came from some other source would
9 be through you, sir. I mean, how it came into the
10 possession of the People would be through you. Miss
11 Gregory won't do it.

12 MR. RODRIGUEZ: Okay, good enough. That's fine.

13 THE COURT: Okay.

14 You've got Rosario, Miss Gregory?

15 MS. GREGORY: Yes, your Honor.

16 MR. RODRIGUEZ: I have some other issues, your
17 Honor.

18 THE COURT: Please.

19 MR. RODRIGUEZ: There is, if the Court is not
20 aware, the Court may be aware of another charge, similar
21 charge in Queens, a separate rape charge in Queens.

22 THE COURT: But how is that an issue at this
23 point?

24 MR. RODRIGUEZ: I just want to make sure it
25 doesn't become an issue in this case; that no evidence of

1 that charge be brought in this case in any form or fashion.

2 MS. GREGORY: Your Honor, the DNA report includes
3 both cases. Obviously they'll be redacted, should the jury
4 want to see them, to take out the second instance. But
5 when the examiner comes, she'll come with the full file.

6 THE COURT: I understand.

7 MR. RODRIGUEZ: And I just wanted to make sure
8 that there's no evidence of any rape trauma syndrome to be
9 brought forward in this case.

10 THE COURT: I can't promise you that, sir. I
11 mean, at this point I'm not going to give you an advisory
12 ruling on that issue.

13 MR. RODRIGUEZ: Well, the reason I'm making this
14 --

15 THE COURT: I'm sure in your mind you have a
16 legitimate reason. I'll want to hear how the trial unfolds
17 before I do that.

18 MR. RODRIGUEZ: Well, then see, the reason -- I
19 understand your point too, your Honor. But it seems to me
20 that if, in fact, my understanding of the syndrome or
21 whatever I understand of the evidence that I have before
22 this case and my view of it is that in order for this to be
23 entered properly, evidence of rape trauma syndrome, is that
24 she would have had to have been clinically checked to
25 determine, otherwise we would have a situation where some

1 quote-unquote expert or someone would offer opinion
2 evidence of a speculative nature without having determined
3 whether or not this person suffers from that, and have some
4 kind of clinical proof of that, at which point I would then
5 be able to have my expert come in and do a similar test.

6 THE COURT: Miss Gregory, you're sitting in
7 silence. What is your position on this?

8 MS. GREGORY: Your Honor, I put a rape trauma
9 expert on my witness list. I, at this point I would need
10 to see how the trial unfolds to see whether or not I would
11 call him or not.

12 THE COURT: Who's that, ma'am?

13 MS. GREGORY: That's the last witness, Dr. Don
14 Lewittes.

15 THE COURT: Okay.

16 Okay, yes, sir?

17 MR. RODRIGUEZ: Well, your Honor, I've looked at
18 the case carefully and the facts of this, in this
19 particular case. My understanding of what rape trauma
20 consists of, it's like post-traumatic syndrome. And I
21 believe that there are certain criteria that have to be met
22 under the DSM, and I don't believe they've been met.

23 THE COURT: Let's assume that's correct. At this
24 point it will be premature for me, given that, to give you
25 a ruling that precludes them from doing that.

1 I mean, what you're telling me is there may be
2 criteria that she's required to comply with. So I'll wait
3 and hear it.

4 MR. RODRIGUEZ: But then what happens then, your
5 Honor, because I haven't had an opportunity to have an
6 expert --

7 THE COURT: Well, you should have one on hand
8 then, counsel. You should have one on hand.

9 You're 18-B on this case?

10 MR. RODRIGUEZ: Yes.

11 THE COURT: Then give me an order.

12 MR. RODRIGUEZ: Okay, I'll bring an order in.

13 THE COURT: Give me an order.

14 Mr. LaRose, would you give the defendant the
15 Antommarchi waiver, please.

16 THE CLERK: Has it already, your Honor.

17 THE COURT: Mr. Rodriguez, if you and your client
18 will discuss that, please, and let me know once you've
19 finished.

20 THE COURT: Mr. Rodriguez, let me just say this:
21 During jury selection it's unlikely that I will ever speak
22 to a juror, prospective juror alone. Usually what I do is
23 if they have something of a sensitive nature, they'll be
24 brought in, either be in the jury box or in the first row,
25 you, your client, the People and the reporter are present,

1 and I will question the juror about any concerns he or she
2 might have outside of the presence of the other jurors.

3 The only time the Antommarchi really will kick in
4 is during the course of trial if there's a legal issue that
5 we have to discuss, we now have a robing room, we'll go in
6 the back of the courtroom to the robing room. Your client
7 is welcome to come if he wants to. If he comes, however,
8 it will be under supervision of court personnel. But
9 that's the only time that he would really be affected by
10 Antommarchi.

11 MR. RODRIGUEZ: Okay. Those are when we have
12 sidebars about some point of contention during the course
13 of the trial.

14 THE COURT: I try to limit them. But if there's
15 going to be a sidebar, it's going to usually be in the
16 back. And the jurors will either be told to excuse us or
17 I'll try to send them out and we'll have them in the
18 courtroom.

19 MR. RODRIGUEZ: Just logistically if we approach,
20 if he was interested in going in the back, then the court
21 officers would go back with him?

22 THE COURT: Yes.

23 MR. RODRIGUEZ: Okay. Thank you.

24 THE COURT: All you would have to do, if there's
25 a sidebar and you're going to say approach, if he hadn't

1 signed the Antommarchi waiver, at that point the decision
2 becomes upon me, either I send the jury out or to have us
3 go in the back in the presence of the jury. But I'll try
4 to keep it at a minimum. If I think it's going to be a
5 little bit longer, I'll send the jury out.

6 MR. RODRIGUEZ: Okay.

7 (Brief pause in proceedings.)

8 THE COURT: Mr. Fuentes, have you had a chance to
9 discuss this issue about the Antommarchi with your lawyer?

10 THE DEFENDANT: Yes, I have, your Honor.

11 THE COURT: Any questions?

12 THE DEFENDANT: Yes, I have. From what I
13 understand, I do agree to the Antommarchi waiver.

14 THE COURT: Okay. You signed the form here, is
15 that correct?

16 THE DEFENDANT: Correct.

17 THE COURT: I want you to understand, during jury
18 selection, again, I don't speak to jurors individually. It
19 will be in your presence and your lawyer's presence, as
20 well as Miss Gregory's, and it will be recorded. However,
21 during the course of the trial if there are issues that we
22 have to discuss, that will be done in the back.

23 THE DEFENDANT: Between you?

24 THE COURT: Yeah. Your lawyer will be present,
25 the reporter will be present and the Miss Gregory will be

1 present. He'll be free to come back and tell you.

2 However, you agreed you don't want to be present, is that
3 correct?

4 THE DEFENDANT: Yeah, I do waive my rights, your
5 Honor.

6 THE COURT: Is there anything else we need to
7 discuss here, Miss Gregory?

8 MS. GREGORY: Your Honor, I would like to turn
9 over some Rosario.

10 THE COURT: Okay. What's the Rosario?

11 MS. GREGORY: Your Honor, it's the sprint report,
12 the complaint report and the aided report, voucher number
13 L324290, sexual assault examination documents, memo book
14 entry, the detective dispatch sheet, unusual occurrence
15 report, complaint follow-up reports, the pattern work sheet
16 and memo, on-line booking system arrest work sheet and omni
17 form system arrest sheet, a typed arrest report, mugshot
18 pedigree, the prisoner movement slip, handwritten notes
19 from the detective, a DNA match report, and the New York
20 State forensic DNA data bank report of analysis, a DNA
21 match letter, a DNA data bank specimen submission form,
22 voucher L914475, request for laboratory examination, the
23 grand jury synopsis sheet and minutes. And previously the
24 medical records of the complainant as well as the full DNA
25 reports and notes from the medical examiner's office have

1 been turned over.

2 THE COURT: Counsel, I don't ask you to
3 acknowledge receipt at this point. Why don't you review
4 the terms and let me know at some point in time this
5 afternoon or tomorrow whether in fact you have those.

6 MR. RODRIGUEZ: Okay. I'm just going through the
7 grand jury minutes, your Honor, to see if there's anything
8 in the grand jury minutes that --

9 THE COURT: Yes, sir. What I'm asking you to do
10 now, you can table that and look at it later, and if in
11 fact there's something missing, then please feel free to
12 bring it to my attention.

13 MR. RODRIGUEZ: Okay.

14 THE COURT: All right.

15 With that, how many jurors do we have, Mike?

16 THE CLERK: I believe 51.

17 THE COURT: All right. Mr. LaRose, let's get 51
18 people in here.

19 (Whereupon, a panel of prospective jurors entered
20 the courtroom.)

21 THE COURT: Good morning, ladies and gentlemen.
22 I apologize for the delay. In addition to being a trial
23 part, I do have a calendar. And unfortunately I had a case
24 this morning that took longer than I thought to resolve the
25 problems.

Voir Dire

17

1 If you will, those of you who claim you speak and
2 understand English, please listen to Mr. LaRose.

3 THE CLERK: Ladies and gentlemen of the panel,
4 all please rise and raise your right hand and face me.

5 Do you and each of you sincerely and solemnly
6 swear or affirm that you will answer truthfully all
7 questions asked of you regarding your qualifications to
8 serve as a juror in this matter?

9 PROSPECTIVE JURORS: Chorus of "I do."

10 THE CLERK: Thank you.

11 Please be seated.

12 THE COURT: Now, before we start, is there anyone
13 who claims he or she does not speak and understand English?

14 Is there any prospective juror who is under the
15 age of 18?

16 Are you all citizens of the United States and
17 residents of Kings County, Brooklyn?

18 Okay. This is Part 37. My name is Plummer Lott.
19 I am the Judge who will be presiding over this trial. The
20 name of the case is the People of the State of New York
21 versus Jose Fuentes. The clerk is Mr. Mike LaRose.

22 It's estimated that this trial will last about a
23 week in terms of the evidence.

24 I hope to get the jury selected by tomorrow. If
25 that's done, I hope Thursday to take testimony. We'll work

KL

Voir Dire

18

1 only the morning session on Friday, the 28th. We'll be
2 back the 31st. We'll probably only work up until about 3
3 o'clock the 31st.

4 I expect to give you the case November 1st.
5 That's the duration of the case. I can't be certain, but
6 in all likelihood the jury will probably get the case on
7 November 1st. Everybody clear about the schedule?

8 Now, even though this is a criminal case, please
9 understand that no longer is there a requirement that
10 jurors be sequestered. So if the jury gets the case and at
11 the end of the day you have not reached your verdict,
12 you'll be allowed to separate and go home and then return
13 the following day to resume your deliberations. So no
14 sequestration. Everybody clear about that?

15 PROSPECTIVE JURORS: Yes.

16 THE COURT: All right.

17 Now, let me also explain we generally start at
18 about 10 o'clock. Most days it's 10:00 to 5:00. There may
19 be days when we don't work completely to 5:00, but you will
20 know exactly the schedule each and every day. We are jury
21 friendly in that regard. We do take breaks; there's a
22 morning break and an afternoon break, and then certainly
23 you'll have a lunch break.

24 If you're selected and you have any special
25 concerns, I have an excellent crew, just let them know and

KL

Voir Dire

19

1 they'll advise us and we'll try to accommodate you as best
2 we can.

3 Now, seated to my left is Miss Gregory. She's an
4 assistant district attorney.

5 Miss Gregory, if you will, please.

6 MS. GREGORY: Good afternoon.

7 THE COURT: She's an ADA in the office of Charles
8 Hynes. It's going to be her responsibility to present
9 evidence on behalf of the People of the State of New York.

10 To my left is Mr. John Rodriguez.

11 MR. RODRIGUEZ: Good afternoon, ladies and
12 gentlemen.

13 THE COURT: Mr. Rodriguez represents the
14 defendant.

15 And to his right is Mr. Fuentes.

16 Mr. Fuentes, if you will.

17 THE DEFENDANT: Good afternoon, ladies and
18 gentlemen.

19 THE COURT: Now, the fact that this case is
20 brought in the name of the People or that evidence is going
21 to be presented by a public official does not in any way
22 indicate that the public wants a specific verdict. The
23 People of the state are served by whatever verdict is
24 justified by the evidence.

25 Now, this trial will concern events which

1 allegedly took place on January 27th, 2002, in the vicinity
2 of 474 Marcy Avenue.

3 What section of Brooklyn is that, ma'am?

4 A PROSPECTIVE JUROR: Bed-Stuy.

5 THE COURT: Thank you. Okay.

6 I'm sure some of you are familiar with Bed-Stuy.
7 I'll ask you if you're called up here whether you have any
8 familiarity with that address.

9 And it's alleged here that this defendant engaged
10 one Gina Colon in forcible sexual intercourse. The charges
11 are rape.

12 Now, please bear in mind that this is just a
13 summary of the allegations made by the People in their
14 indictment. It does not constitute the Court's view of the
15 case, nor the evidence against the defendant.

16 Please also keep in mind that the indictment and
17 the charges set forth in the indictment are allegations
18 only.

19 The indictment has no significance whatsoever in
20 terms of the guilt or non-guilt of the defendant. It's
21 just a written accusation, nothing more than that.

22 Indeed, Mr. Fuentes is presumed innocent. That
23 presumption remains with him throughout the trial.

24 Mr. LaRose is going to call the names of 14 of
25 you. You're going to take seats to my right.

Voir Dire

21

1 If you will, please, Mr. LaRose.

2 THE CLERK: Certainly.

3 As the Judge stated, I'm going to be calling your
4 name. I ask if your name is called, say here or present,
5 since the parties have their backs directed to you.

6 If I mispronounce anybody's name, I apologize in
7 advance.

8 And please take the seats as directed by the
9 court officer.

10 THE CLERK: Charlene Ebron, E-B-R-O-N, seat one,
11 please.

12 THE COURT: Counsel -- just a moment -- could you
13 come up to the bench a minute.

14 (Off-the-record bench conference.)

15 THE CLERK: Michele Small-English, S-M-A-L-L
16 hyphen E-N-G-L-I-S-H, if you'll take seat two.

17 Robert Ellis, E-L-L-I-S, seat three.

18 THE COURT: If you're here, just acknowledge you
19 are. The lawyers and the defendant have their backs to
20 you.

21 THE CLERK: David Debellotte,
22 D-E-B-E-L-L-O-T-T-E. Seat four.

23 Yolanda Duda, D-U-D-A, seat five, please.

24 Michelle Corley, C-O-R-L-E-Y, seat six.

25 DeShawn Connor, C-O-N-N-O-R, seat seven.

KL

Voir Dire

22

1 Muriel Francois, F-R-A-N-C-O-I-S, seat eight.

2 Barry Robinson, R-O-B-I-N-S-O-N, seat nine.

3 THE COURT: Mr. Connor, the seat in the back.

4 William Rookwood, R-O-O-K-W-O-O-D, seat ten.

5 Alie Coleman, C-O-L-E-M-A-N, seat 11.

6 Danuda S-Z-P-L-I-T-G-E-J-B-E-R, seat twelve.

7 Dana Lawrence, L-A-W-R-E-N-C-E, seat 13, please.

8 Christina Landy, L-A-N-D-Y, seat 14.

9 THE COURT: Those of you whose names were not

10 called, please try to listen. Because in all likelihood,

11 I'm not going to get a jury out of this first round. So

12 when you come up, in all likelihood the questions we'll ask

13 then will be the same questions asked of now. So please

14 try to pay attention.

15 This procedure is routine in the sense that it is

16 what occurs in the selection of cases in criminal cases

17 that are tried by jury. The objective is to obtain a fair

18 and impartial jury. That's one that will base its verdict

19 only on an honest evaluation of the evidence and an honest

20 application of the law.

21 Now, in a moment I'm going to ask those people to

22 my right some questions. My questions will be based on the

23 questionnaires you have in your hand.

24 Following my questions, the lawyers will be

25 allowed to speak to you. They will not be given a very

KL

1 long time, but they will speak with you.

2 Their questions will be based on the answers that
3 you might give in terms of your responses to the
4 questionnaire, and they may ask you about some of the
5 issues they feel may arise during the course of the trial.

6 Now, please understand that none of the questions
7 asked are meant to be judgmental, they're not meant to be
8 unduly personal and we're not trying to embarrass anyone.

9 I try to keep this phase of jury selection as
10 light as possible because I want you to be able to speak
11 and communicate with these attorneys so we have some idea
12 whether you're the right juror for the case.

13 There is no right or wrong answers to any of the
14 questions. I guess the wrong answer would be a dishonest
15 answer. And the right answer would be the answer you feel
16 in the pit of your stomach after you hear the question
17 asked.

18 If a question is asked and you feel that it is of
19 a personal nature, please say so and I will allow you to
20 answer that question outside the presence of the jury.

21 Now, folks, let me just say this before we
22 proceed: I'm well aware that jury service is an
23 inconvenience, but we cannot do our job unless people are
24 willing to sacrifice their time to do this. There is no
25 provision in law for professional jurors, so we are

1 dependent upon you.

2 While we are jury friendly, we make every effort
3 to accommodate you, please do not ask to be excused because
4 it's an inconvenience.

5 If you are excused it doesn't mean you're off
6 jury duty, you're just off this case. And in all
7 likelihood what will happen is you'll go downstairs and you
8 might be called for another case, and probably find a less
9 sympathetic Judge and group of lawyers.

10 But please don't ask to be excused simply because
11 of the inconvenience. I'm well aware of that.

12 Now, in order for you to be jurors in this case
13 it doesn't require you to know anything about the law. If
14 selected, I will explain the law to you.

15 However, if selected, you must follow the law,
16 you must accept it as I give it and apply it to the facts
17 as you find them from the evidence presented.

18 Now, if you can't follow the law, then basically
19 you just can't sit.

20 Just a few principles of law which apply to this
21 case so you have some idea what I'm talking about. I've
22 indicated to you that this case was brought by an
23 indictment. Please understand that the indictment is
24 simply a written accusation. It has no evidentiary value
25 whatsoever. And in every case a defendant is presumed

1 innocent. The defendant as he sits here is presumed
2 innocent. That presumption remains with him throughout the
3 trial and can only be overcome by the People in terms of
4 the evidence they present.

5 If you are convinced that this evidence convinces
6 you of his guilt, then the presumption is destroyed, then
7 and only then will it be destroyed.

8 The defendant has entered a plea of not guilty to
9 the crimes charged in the indictment. The burden is on the
10 People to prove each and every material allegation
11 contained in the indictment and the essential elements
12 required to prove the material allegations.

13 The standard is proof beyond a reasonable doubt.
14 I'll explain in greater detail at the end of the trial what
15 it means. For the moment, it doesn't mean proof beyond all
16 doubt or proof to a mathematical certainty. Just proof
17 beyond a reasonable doubt.

18 A person accused of a crime is not required to
19 testify. If that turns out to be the situation in this
20 case, you must not draw any inference adverse to the
21 defendant, nor may you raise it during jury deliberations.

22 Now, you must decide this case entirely on the
23 basis of the evidence presented, my instructions on the
24 law, without any consideration whatsoever of what the
25 punishment will be if a verdict of guilty is found, and you

1 must not allow sympathy or empathy you feel for anyone to
2 divert you from your duty to consider all the evidence
3 fairly and impartially when deliberating upon a verdict.

4 Now, as jurors your function is just twofold:

5 One, you're going to determine fairly and
6 impartially from all the evidence in this case whether a
7 crime was committed.

8 And two, whether this defendant committed that
9 crime.

10 You're not here to make a moral judgment about
11 anybody. At the end of the trial you'll be making a
12 factual judgment about the quality of the People's
13 evidence, whether it convinces you beyond a reasonable
14 doubt of the defendant's guilt. That's the judgment we're
15 asking you to make here.

16 Now, any personal concerns or considerations you
17 might have about the nature of the crime must have nothing
18 to do with your decision in this case and must not prevent
19 you from being a fair and impartial juror.

20 Now, evidence in this case is going to come from
21 one of three sources: Testimony of witnesses under oath,
22 exhibits which are marked and received in evidence and any
23 stipulations, that's an agreement between the parties.

24 You're going to have to pass upon the
25 credibility, the truthfulness and accuracy of that

1 evidence.

2 I want you to understand the mere fact that a
3 person comes in and raises his or her right hand and swears
4 to tell the truth doesn't mean the person is telling the
5 truth. There are one of three possibilities: The person is
6 being truthful with you, the person is mistaken or the
7 person is intentionally lying. Ultimately, that's going to
8 be your call.

9 You're going to use the same everyday tests you
10 use in your daily dealings with people outside this
11 courtroom to determine whether someone is being truthful,
12 is mistaken or is intentionally lying. So in judging
13 credibility, use the same tests you've used in your daily
14 lives.

15 Now, some considerations may be the witness'
16 intelligence; their opportunity to see and hear things
17 about which they're testifying; their motive for testifying
18 a certain way; their manner while testifying; whether they
19 said something different at an earlier time; the extent to
20 which their testimony is consistent with other evidence you
21 believe.

22 So in short, look, when a witness comes in and
23 raises his or her right hand and swears to tell the truth,
24 be alert for anything in the witness' words, demeanor,
25 behavior on the witness stand or anything else which might

1 help you judge the truth and veracity of that witness'
2 testimony.

3 No one is to be automatically believed. No one
4 is entitled to be automatically believed in that they come
5 in and are automatically believed. That pertains to police
6 officers. They're to be evaluated the same way as anyone
7 else.

8 Anyone feel that he or she can't follow those
9 rules?

10 In the absence of hands, we'll move on.

11 I've introduced to you the attorneys and the
12 defendant. Any of these people seem familiar to you in the
13 sense that you may have seen them outside this courtroom
14 before today?

15 474 Marcy Avenue, any of you familiar with that
16 location in terms of living, visiting or working near that
17 address?

18 PROSPECTIVE JUROR #4: My mother lives on, I
19 think it's -- I'm not sure of the number. It's corner of
20 Gates and Marcy.

21 THE COURT: Let me ask you this: Do you have any
22 knowledge about the area that would affect your ability to
23 be fair?

24 PROSPECTIVE JUROR #4: I been in that area for
25 almost 15 years. I live on Patchen and my mother has been

Voir Dire

29

1 there at this address on Marcy for over ten years.

2 THE COURT: Again, any knowledge about the area
3 that would affect your ability to be impartial?

4 PROSPECTIVE JUROR #4: When you say knowledge of
5 the area --

6 THE COURT: Yes, sir. The kind of area it is.

7 PROSPECTIVE JUROR #4: I don't know how to answer
8 that.

9 THE COURT: You've answered already.

10 I cannot get an unequivocal assurance out of him.

11 Do I have your consents?

12 MR. RODRIGUEZ: Yes.

13 MS. GREGORY: Yes.

14 THE COURT: Please return downstairs to Central
15 Jury, please.

16 That's number four, Mr. LaRose.

17 Give me another name, please.

18 I will tell you what, we'll proceed without it.

19 Now, folks, what I'm concerned about is this:

20 Is there anybody who feels he or she has an opinion about
21 an area that would affect their ability to be fair?

22 Anybody?

23 Other than what I've indicated is alleged here,
24 any of you think you know anything at all about this case?

25 I'm going to read some names. If any of these

Voir Dire

30

1 names sound familiar to you, please raise your hand: Gina
2 Colon, Tammy Little, Kevin Fedynak, Nurse Durant from
3 Woodhull Hospital, Dan McSwiggan from Woodhull Hospital,
4 also a nurse, Steve Litwin, detective, Marie Samples, Don
5 Lewittes, Aubry Weekes.

6 Any of those names sound familiar to anybody?

7 Okay. All right.

8 Miss Ebron, if you will, ma'am, you have the
9 questionnaire, just go right down the list. Your name,
10 over 18, straight down the list.

11 PROSPECTIVE JUROR #1: Charlene Ebron, 36, East
12 Flatbush.

13 College. Salesperson.

14 Single. No.

15 THE COURT: Any areas of interests or hobbies
16 you'd care to mention?

17 PROSPECTIVE JUROR #1: No.

18 THE COURT: You belong to any organizations you'd
19 care to mention?

20 PROSPECTIVE JUROR #1: No.

21 THE COURT: Have a favorite newspaper?

22 PROSPECTIVE JUROR #1: New York Times.

23 THE COURT: New York Times. You read it on
24 Sunday?

25 PROSPECTIVE JUROR #1: Sometimes.

KL

Voir Dire

31

1 THE COURT: Any friends or relatives in law
2 enforcement, ma'am?

3 PROSPECTIVE JUROR #1: No.

4 THE COURT: Do you have any opinion about the
5 criminal justice system which would affect your ability to
6 be fair?

7 PROSPECTIVE JUROR #1: No.

8 THE COURT: Were you ever the victim of a crime?

9 PROSPECTIVE JUROR #1: No.

10 THE COURT: Car stolen, house burglarized
11 anything like that?

12 PROSPECTIVE JUROR #1: No.

13 THE COURT: Any family member or friend, as far
14 as you know, ever the victim of a crime?

15 PROSPECTIVE JUROR #1: No.

16 THE COURT: Ever accused of a crime?

17 PROSPECTIVE JUROR #1: No.

18 THE COURT: Any family member or friend ever
19 accused?

20 PROSPECTIVE JUROR #1: No.

21 THE COURT: Any prior jury service or is this
22 your first time?

23 PROSPECTIVE JUROR #1: No. I did it in 2000 but
24 I wasn't --

25 THE COURT: You were called in?

KL

Voir Dire

32

1 PROSPECTIVE JUROR #1: Yeah.

2 THE COURT: Did you get this far or what?

3 PROSPECTIVE JUROR #1: No. I wasn't picked.

4 THE COURT: Is there any reason why you could not
5 sit on this case, ma'am?

6 PROSPECTIVE JUROR #1: No.

7 THE COURT: Thank you, very much.

8 Miss Small-English, if you will, ma'am.

9 PROSPECTIVE JUROR #2: Michelle Small-English.
10 Thirty-seven.

11 THE COURT: Area of Brooklyn you reside in? Just
12 the area.

13 PROSPECTIVE JUROR #2: Canarsie.

14 THE COURT: Educational background. College?
15 High school?

16 PROSPECTIVE JUROR #2: College. Patient care
17 associate and security.

18 Single. No.

19 THE COURT: Any areas of interest or hobbies
20 you'd care to mention?

21 PROSPECTIVE JUROR #2: No. Dancing, music.

22 THE COURT: You belong to any organizations you'd
23 care to mention?

24 PROSPECTIVE JUROR #2: No.

25 THE COURT: Have a favorite newspaper?

KL

Voir Dire

33

1 PROSPECTIVE JUROR #2: Daily News.

2 THE COURT: Any friends or relatives in law
3 enforcement, ma'am?

4 PROSPECTIVE JUROR #2: I have my uncle that's a
5 judge.

6 THE COURT: Okay. Here in the state or in this
7 country?

8 PROSPECTIVE JUROR #2: Yes.

9 THE COURT: Do you want to mention his name?

10 PROSPECTIVE JUROR #2: Mr. Hurley.

11 THE COURT: Where does he sit?

12 PROSPECTIVE JUROR #2: He just became a judge
13 this year.

14 THE COURT: In what borough? Kings County?

15 PROSPECTIVE JUROR #2: Brooklyn, yes.

16 THE COURT: Do you think that relationship would
17 affect your ability to be fair and impartial in this case?

18 PROSPECTIVE JUROR #2: No.

19 THE COURT: You know during the course of this
20 trial if selected you must follow my instructions and you
21 can't talk to your uncle about any instructions he might
22 give?

23 PROSPECTIVE JUROR #2: Yes.

24 THE COURT: Can you do that?

25 PROSPECTIVE JUROR #2: Yes, your Honor.

KL

1 THE COURT: Do you have any opinion about the
2 criminal justice system which would affect your ability to
3 be fair?

4 PROSPECTIVE JUROR #2: No, sir.

5 THE COURT: Were you, a family member or friend
6 ever the victim of a crime?

7 PROSPECTIVE JUROR #2: No, sir.

8 THE COURT: Ever accused of a crime?

9 PROSPECTIVE JUROR #2: No.

10 THE COURT: As far as you know, any family member
11 or friend ever accused?

12 PROSPECTIVE JUROR #2: No.

13 THE COURT: Any prior jury service?

14 PROSPECTIVE JUROR #2: Yes.

15 THE COURT: Civil or criminal?

16 PROSPECTIVE JUROR #2: Criminal.

17 THE COURT: How long ago are we talking about?

18 PROSPECTIVE JUROR #2: Six.

19 THE COURT: Six years ago?

20 PROSPECTIVE JUROR #2: Yes.

21 THE COURT: Was it at 360 Adams or 120
22 Schermerhorn? Was it in Kings County, I should ask?

23 PROSPECTIVE JUROR #2: 141 Livingston.

24 THE COURT: That was probably civil. Was this a
25 six-person jury with two alternates or what?

1 PROSPECTIVE JUROR #2: Yes.

2 THE COURT: Did the jury actually deliberate?

3 PROSPECTIVE JUROR #2: Yes, sir.

4 THE COURT: And did you reach a decision?

5 PROSPECTIVE JUROR #2: Yes, sir.

6 THE COURT: Anything about your service on that
7 case that would affect your ability to sit on this case?

8 PROSPECTIVE JUROR #2: No, sir.

9 THE COURT: Is there any reason why you could not
10 sit on this case?

11 PROSPECTIVE JUROR #2: No, sir.

12 THE COURT: Thank you, ma'am.

13 Mr. Ellis, if you will, please.

14 PROSPECTIVE JUROR #3: Robert Ellis.

15 Twenty-eight. I live in East New York.

16 Bachelor's in psychology. I'm a teacher.

17 Single. No children. THE COURT: Any areas of
18 interest or hobbies you'd care to mention?

19 PROSPECTIVE JUROR #3: I'm a musician.

20 THE COURT: You're in a band or a group?

21 PROSPECTIVE JUROR #3: Free-lance.

22 THE COURT: What do you play?

23 PROSPECTIVE JUROR #3: Piano.

24 THE COURT: Belong to any organizations you'd
25 care to mention?

Voir Dire

36

1 PROSPECTIVE JUROR #3: No.

2 THE COURT: Favorite newspaper? At least one you
3 read more so than others?

4 PROSPECTIVE JUROR #3: No.

5 THE COURT: How do you get your news then?
6 Television or what?

7 PROSPECTIVE JUROR #3: Basically.

8 THE COURT: Any friends or relatives in law
9 enforcement?

10 PROSPECTIVE JUROR #3: No.

11 THE COURT: Any opinion about the criminal
12 justice system which would affect your ability to be fair?

13 PROSPECTIVE JUROR #3: No.

14 THE COURT: Were you, a family member or friend
15 ever the victim of a crime? Car stolen, house broken into,
16 mugging, anything like that?

17 PROSPECTIVE JUROR #3: No.

18 THE COURT: Ever accused of a crime?

19 PROSPECTIVE JUROR #3: No.

20 THE COURT: What about a family member or friend?

21 PROSPECTIVE JUROR #3: Distant friend.

22 THE COURT: Are you able to talk about that
23 publicly?

24 PROSPECTIVE JUROR #3: Sure. I was in junior
25 high school. A friend of mine was accused of stealing

KL

1 something from a convenience store.

2 THE COURT: Okay. What happened to the case?

3 PROSPECTIVE JUROR #3: I don't even know.

4 THE COURT: Was there an arrest? And this was
5 juvenile, so was it taken to Family Court or anything like
6 that or they squashed it?

7 PROSPECTIVE JUROR #3: To be honest, I don't
8 know.

9 THE COURT: Do you think that circumstance would
10 affect your ability to sit on this case?

11 PROSPECTIVE JUROR #3: No.

12 THE COURT: Ever sat on a jury before?

13 PROSPECTIVE JUROR #3: No, not this far.

14 THE COURT: Is there any reason why you couldn't
15 sit?

16 PROSPECTIVE JUROR #3: Well, the case was
17 dismissed after the jury selection.

18 THE COURT: I'm saying, but so you were on a
19 jury?

20 PROSPECTIVE JUROR #3: Well, I was selected but
21 the case was dismissed first day.

22 THE COURT: Did you hear any evidence at all?

23 PROSPECTIVE JUROR #3: No.

24 THE COURT: Was it a criminal case?

25 PROSPECTIVE JUROR #3: Civil.

Voir Dire

38

1 THE COURT: Okay. Anything about your service on
2 that case that would affect your ability to sit on this
3 case?

4 PROSPECTIVE JUROR #3: No.

5 THE COURT: Is there any reason why you could not
6 sit here?

7 PROSPECTIVE JUROR #3: No.

8 THE COURT: Thank you, sir.

9 Miss Duda.

10 PROSPECTIVE JUROR #5: Yolanda Duda. I'm 42.

11 THE COURT: Keep your voice up, ma'am.

12 PROSPECTIVE JUROR #5: I live in Borough Park in
13 Brooklyn.

14 I have master's degree in kindergarten education,
15 but I working in hotel as a room stylist.

16 I'm married.

17 THE COURT: What does your husband do, what kind
18 of work?

19 PROSPECTIVE JUROR #5: He works in construction.

20 THE COURT: How many children?

21 PROSPECTIVE JUROR #5: I have one child. She's
22 18 almost.

23 THE COURT: Any areas of interest or hobbies
24 you'd care to mention? What sort of things do you do in
25 your leisure time? Television? Read?

KL

1 PROSPECTIVE JUROR #5: I like to read books,
2 watch television and go outside, I mean ice skating in the
3 winter or go in the mountains.

4 THE COURT: Do you belong to any organizations
5 you'd care to mention?

6 PROSPECTIVE JUROR #5: Just working
7 organizations, the union.

8 THE COURT: Do you have a favorite newspaper, at
9 least one you read more so than others?

10 PROSPECTIVE JUROR #5: Daily News. I like to
11 read magazines.

12 THE COURT: Do you have any friends or relatives
13 in law enforcement?

14 PROSPECTIVE JUROR #5: No.

15 THE COURT: Do you have any opinion about the
16 criminal justice system which would affect your ability to
17 be fair?

18 PROSPECTIVE JUROR #5: No.

19 THE COURT: Were you, a family member or friend
20 ever the victim of a crime? House broken into, mugging,
21 anything like that?

22 PROSPECTIVE JUROR #5: No.

23 THE COURT: Ever accused of a crime?

24 PROSPECTIVE JUROR #5: No.

25 THE COURT: As far as you know, any family member

Voir Dire

40

1 or friend ever accused?

2 PROSPECTIVE JUROR #5: No.

3 THE COURT: Have you ever sat on a jury before?

4 PROSPECTIVE JUROR #5: No. My first time.

5 THE COURT: First time. Is there any reason why
6 you couldn't sit here?

7 PROSPECTIVE JUROR #5: I don't think there's a
8 reason.

9 THE COURT: Thank you, ma'am.
10 Miss Corley.

11 PROSPECTIVE JUROR #6: Michelle Corley.
12 Thirty-four. I live in Crown Heights.

13 High school. I'm a travel loan specialist.
14 I'm married.

15 THE COURT: Your husband, what does he do, ma'am?

16 PROSPECTIVE JUROR #6: He's a laborer.

17 THE COURT: Any children?

18 PROSPECTIVE JUROR #6: No.

19 THE COURT: Any areas of interest or hobbies
20 you'd care to mention?

21 PROSPECTIVE JUROR #6: No.

22 THE COURT: Have a favorite newspaper?

23 PROSPECTIVE JUROR #6: Yes. The Daily News.

24 THE COURT: Do you belong to any organizations
25 you'd care to mention?

KL

Voir Dire

41

1 PROSPECTIVE JUROR #6: No, I don't.

2 THE COURT: Any friends or relatives in law
3 enforcement?

4 PROSPECTIVE JUROR #6: Yes.

5 THE COURT: Who do you know? Judges? Lawyers?

6 PROSPECTIVE JUROR #6: Cops.

7 THE COURT: Do you think those relationships
8 would affect your ability to be fair?

9 PROSPECTIVE JUROR #6: No.

10 THE COURT: Do you have any opinion about the
11 criminal justice system which would affect your ability to
12 be fair?

13 PROSPECTIVE JUROR #6: No.

14 THE COURT: Were you, a family member or friend
15 ever the victim of a crime?

16 PROSPECTIVE JUROR #6: Yes.

17 THE COURT: Who are we talking about?

18 PROSPECTIVE JUROR #6: I was.

19 THE COURT: Are you able to talk about it
20 publicly or want to do it privately?

21 PROSPECTIVE JUROR #6: I'll do it privately.

22 THE COURT: Okay, fine.

23 Were you, a family member or friend ever accused
24 of a crime?

25 PROSPECTIVE JUROR #6: Yes.

KL

Voir Dire

42

1 THE COURT: We'll to that privately as well.
2 Any prior jury service or is this your first
3 time?

4 PROSPECTIVE JUROR #6: No, it's not the first
5 time. I never was selected.

6 THE COURT: Okay. Is there any reason why you
7 couldn't sit on this case?

8 PROSPECTIVE JUROR #6: No.

9 THE COURT: We'll speak about the other things
10 privately, ma'am. Thank you.

11 Mr. Lawrence, if you will, please.

12 PROSPECTIVE JUROR #13: Dana Lawrence. I'm 22.
13 Live in East Flatbush.

14 THE COURT: I'm sorry, it should be reversed.
15 Please forgive me.

16 Go ahead.

17 PROSPECTIVE JUROR #13: I'm currently in
18 college; my last year.

19 I'm single. No children.

20 I paint and draw.

21 No organizations. Don't have a favorite
22 newspaper.

23 THE COURT: Any friends or relatives in law
24 enforcement?

25 PROSPECTIVE JUROR #13: My cousin is a cop.

KL

Voir Dire

43

1 THE COURT: Do you think that relationship would
2 affect your ability to be fair?

3 PROSPECTIVE JUROR #13: No.

4 THE COURT: Do you have any opinion about the
5 criminal justice system which would affect your ability to
6 be fair?

7 PROSPECTIVE JUROR #13: No.

8 THE COURT: Were you ever the victim of a crime,
9 ma'am?

10 PROSPECTIVE JUROR #13: No.

11 THE COURT: As far as you know, any family member
12 or friend ever the victim of a crime?

13 PROSPECTIVE JUROR #13: My mom. Her house was
14 burglarized.

15 THE COURT: How long ago are we talking about?

16 PROSPECTIVE JUROR #13: Like nine years ago.

17 THE COURT: Do you think knowing about that
18 circumstance, would that affect your ability to be fair
19 here?

20 PROSPECTIVE JUROR #13: No.

21 THE COURT: Were you, a family member or friend
22 ever accused of a crime?

23 PROSPECTIVE JUROR #13: No.

24 THE COURT: Any prior jury service?

25 PROSPECTIVE JUROR #13: No.

KL

1 THE COURT: First time?

2 PROSPECTIVE JUROR #13: Uh-hum.

3 THE COURT: Is there any reason why you couldn't
4 sit here?

5 PROSPECTIVE JUROR #13: No.

6 THE COURT: Thank you very much.

7 Miss Landy, if you will, please.

8 PROSPECTIVE JUROR #13: Christina Landy. I'm 20
9 years old. I live in Marine Park.

10 In college. Have a high school diploma. I work
11 in CVS Pharmacy in Kings Plaza. Single. I have no
12 children.

13 I read and write.

14 I don't have any organizations. I read The Daily
15 News.

16 My father is a retired police officer and I have
17 several cousins and uncles who are police officers or
18 retired.

19 THE COURT: Do you think those relationships
20 would affect your ability to be fair?

21 PROSPECTIVE JUROR #14: I don't think so.

22 THE COURT: I'm not challenging your choice of
23 words. When you say "think," does that mean you are
24 uncertain or it's just a matter of speech?

25 PROSPECTIVE JUROR #14: No. I'm uncertain.

Voir Dire

45

1 THE COURT: You're uncertain.

2 Counsel, do I have your assurance -- do I have
3 your consents, rather?

4 MR. RODRIGUEZ: Yes.

5 MS. GREGORY: Yes.

6 THE COURT: Because I don't have her assurance.

7 Ma'am, return downstairs to Central Jury. Leave
8 the questionnaire on the seat.

9 Miss Szplitgejber.

10 PROSPECTIVE JUROR #12: I don't speak English,
11 that's the problem.

12 THE COURT: I see. All right.

13 Miss Coleman, if you will, please.

14 PROSPECTIVE JUROR #11: My name is Alie Coleman.
15 I live in Canarsie.

16 I went to LIU. I'm a dispatcher for the New York
17 City Transit Authority.

18 I'm divorced. I don't have any children.

19 And I write short stories for children.

20 I don't belong to any organizations. I read The
21 Daily News and The Post.

22 THE COURT: Any friends or relatives in law
23 enforcement?

24 PROSPECTIVE JUROR #11: No, I don't have any.

25 THE COURT: Do you have any opinion about the

KL

Voir Dire

46

1 criminal justice system which would affect your ability to
2 be fair?

3 PROSPECTIVE JUROR #11: No.

4 THE COURT: Were you ever the victim of a crime?

5 PROSPECTIVE JUROR #11: Yes.

6 THE COURT: Are you able to talk about it
7 publicly?

8 PROSPECTIVE JUROR #11: Yes.

9 THE COURT: What happened?

10 PROSPECTIVE JUROR #11: I got robbed in the
11 subway.

12 THE COURT: How long ago?

13 PROSPECTIVE JUROR #11: 1983.

14 THE COURT: Did you report that to the police?

15 PROSPECTIVE JUROR #11: Yes, I did.

16 THE COURT: Were you physically injured during
17 the course of the robbery?

18 PROSPECTIVE JUROR #11: Yes.

19 THE COURT: Were you hospitalized?

20 PROSPECTIVE JUROR #11: Yes.

21 THE COURT: How long?

22 PROSPECTIVE JUROR #11: About two days. My arm
23 was broken.

24 THE COURT: Okay. Anybody arrested in connection
25 with that?

KL

Voir Dire

47

1 PROSPECTIVE JUROR #11: The person we didn't
2 know. He was not apprehended, the person who did it.

3 THE COURT: He was?

4 PROSPECTIVE JUROR #11: Was not.

5 THE COURT: Do you think that circumstance would
6 affect your ability to sit on a criminal case, ma'am?

7 PROSPECTIVE JUROR #11: Definitely not, no.

8 THE COURT: Any friend or family member ever the
9 victim of a crime?

10 PROSPECTIVE JUROR #11: No, not that I know of.

11 THE COURT: Ever accused of a crime?

12 PROSPECTIVE JUROR #11: No.

13 THE COURT: Any family member or friend ever
14 accused?

15 PROSPECTIVE JUROR #11: No.

16 THE COURT: Any prior jury service?

17 PROSPECTIVE JUROR #11: Yes.

18 THE COURT: Civil or criminal?

19 PROSPECTIVE JUROR #11: It was criminal, I think.

20 THE COURT: How long ago was that?

21 PROSPECTIVE JUROR #11: That was about seven
22 years.

23 THE COURT: Was it here in Kings County?

24 PROSPECTIVE JUROR #11: Yes, it was.

25 THE COURT: Was it 360 Adams Street?

KL

Voir Dire

48

1 PROSPECTIVE JUROR #11: That's 360 Adams, I
2 believe.

3 THE COURT: Do you remember what kind of case it
4 was?

5 PROSPECTIVE JUROR #11: Rape.

6 THE COURT: Were you one of the first 12 or were
7 you an alternate juror?

8 PROSPECTIVE JUROR #11: One of the first 12.

9 THE COURT: Did the jury deliberate?

10 PROSPECTIVE JUROR #11: Yes, they did.

11 THE COURT: Was a verdict reached?

12 PROSPECTIVE JUROR #11: Yes, it was.

13 THE COURT: What was the verdict?

14 PROSPECTIVE JUROR #11: The person was found
15 innocent.

16 THE COURT: Now, anything about your service on
17 that case that would affect your ability to sit on this
18 case?

19 PROSPECTIVE JUROR #11: No. I would just have to
20 listen to the evidence.

21 THE COURT: Do you remember who the judge was?

22 PROSPECTIVE JUROR #11: No. I'm sorry.

23 THE COURT: Left no impression on you?

24 PROSPECTIVE JUROR #11: It's been a long time
25 ago.

KL

Voir Dire

49

1 THE COURT: My name is Lott, L-O-T-T.

2 Is there any reason why you couldn't sit on this
3 case?

4 PROSPECTIVE JUROR #11: There's no reason.

5 THE COURT: And you could be a fair juror?

6 PROSPECTIVE JUROR #11: Definitely.

7 THE COURT: Mr. Rookwood, please.

8 PROSPECTIVE JUROR #10: My name is William
9 Rookwood. I live in East New York.

10 I have college. I'm a correction officer.

11 I'm married. I got five children.

12 THE COURT: Your wife, what does she do, sir?

13 PROSPECTIVE JUROR #10: She's a parole officer.

14 THE COURT: Any areas of interest or hobbies
15 you'd care to mention?

16 PROSPECTIVE JUROR #10: I'm a cyclist and I do
17 scuba diving.

18 THE COURT: Belong to any organizations other
19 than professional organizations?

20 PROSPECTIVE JUROR #10: No.

21 THE COURT: Favorite newspaper, at least one you
22 read more than others?

23 PROSPECTIVE JUROR #10: I watch a lot of
24 television.

25 THE COURT: A lot of television?

KL

1 PROSPECTIVE JUROR #10: Yes.

2 THE COURT: Do you watch All My Children, General
3 Hospital?

4 PROSPECTIVE JUROR #10: No. Just sports.

5 THE COURT: I record mine. Yeah, I watch sports
6 too.

7 You obviously know people in law enforcement.
8 The question is would you allow those relationships to
9 affect your ability to be fair?

10 PROSPECTIVE JUROR #10: Not at all.

11 THE COURT: Do you have any opinion about the
12 criminal justice system which would affect your ability to
13 be fair?

14 PROSPECTIVE JUROR #10: No.

15 THE COURT: Were you ever the victim of a crime,
16 sir?

17 PROSPECTIVE JUROR #10: No.

18 THE COURT: As far as you know, any family member
19 or friend ever the victim of a crime?

20 PROSPECTIVE JUROR #10: About in 1988 my car was
21 stolen, that's about it.

22 THE COURT: Do you think that circumstance, would
23 that affect your ability to sit on a criminal case?

24 PROSPECTIVE JUROR #10: Not at all.

25 THE COURT: Were you ever accused of a crime?

Voir Dire

51

1 PROSPECTIVE JUROR #10: No.

2 THE COURT: As far as you know, any family member
3 or friend ever accused?

4 PROSPECTIVE JUROR #10: No.

5 THE COURT: Any prior jury service?

6 PROSPECTIVE JUROR #10: Yes.

7 THE COURT: When was that?

8 PROSPECTIVE JUROR #10: Couple of years ago. I
9 wasn't selected.

10 THE COURT: You came in but weren't selected?

11 PROSPECTIVE JUROR #10: Right.

12 THE COURT: Anything about that experience that
13 would affect your ability to sit on this case?

14 PROSPECTIVE JUROR #10: No.

15 THE COURT: Is there any reason why you couldn't
16 sit on this case?

17 PROSPECTIVE JUROR #10: No.

18 THE COURT: Thank you very much.

19 Mr. Robinson, if you will, please, sir.

20 PROSPECTIVE JUROR #9: My name is Barry Robinson.
21 I live on Nostrand Avenue.

22 THE COURT: The area of Brooklyn you reside in;
23 the area not the address.

24 PROSPECTIVE JUROR #9: Brooklyn, Flatbush.

25 THE COURT: Educational background. College?

KL

1 High school?

2 PROSPECTIVE JUROR #9: No, no.

3 THE COURT: High school?

4 PROSPECTIVE JUROR #9: None.

5 THE COURT: Okay. Are you working?

6 PROSPECTIVE JUROR #9: Yes, sir.

7 THE COURT: What kind of work do you do?

8 PROSPECTIVE JUROR #9: Porter.

9 THE COURT: Married? Single? Divorced?

10 PROSPECTIVE JUROR #9: Married.

11 THE COURT: Your wife, what does she do, sir?

12 PROSPECTIVE JUROR #9: She's a home attendant.

13 THE COURT: Any children?

14 PROSPECTIVE JUROR #9: Two.

15 THE COURT: Any areas of interest or hobbies
16 you'd care to mention? What sort of things do you do when
17 you're not working? Atlantic City or the horses or --

18 PROSPECTIVE JUROR #9: Watch TV.

19 THE COURT: Watch TV. All right. You don't watch
20 the afternoon TV?

21 PROSPECTIVE JUROR #9: No, sir. I work.

22 THE COURT: Do you belong to any organizations
23 you'd care to mention?

24 PROSPECTIVE JUROR #9: No, sir.

25 THE COURT: Favorite newspaper?

Voir Dire

53

1 PROSPECTIVE JUROR #9: None of them.

2 THE COURT: How do you get your news? Through
3 television?

4 PROSPECTIVE JUROR #9: Yes, sir.

5 THE COURT: Do you have any friends or relatives
6 in law enforcement?

7 PROSPECTIVE JUROR #9: No, sir.

8 THE COURT: Do you have any opinion about the
9 criminal justice system which would affect your ability to
10 be fair?

11 PROSPECTIVE JUROR #9: No, sir.

12 THE COURT: Were you, a family member or friend
13 ever the victim of a crime?

14 PROSPECTIVE JUROR #9: I don't know.

15 THE COURT: Ever accused of a crime?

16 PROSPECTIVE JUROR #9: I don't know of one.

17 THE COURT: Any family member or friend ever
18 accused, as far as you know?

19 PROSPECTIVE JUROR #9: No.

20 THE COURT: Is this yours first time being called
21 for jury duty?

22 PROSPECTIVE JUROR #9: Yes, sir.

23 THE COURT: Is there any reason why you could not
24 sit on this case?

25 PROSPECTIVE JUROR #9: I don't know, sir.

KL

1 THE COURT: No?

2 PROSPECTIVE JUROR #9: I don't know.

3 THE COURT: Okay. Thank you.

4 Miss Francois.

5 PROSPECTIVE JUROR #8: My name is Muriel
6 Francois. I live in East Flatbush, Clarkson. I'm
7 married.

8 THE COURT: All right. The educational
9 background.

10 PROSPECTIVE JUROR #8: I'm a college student.

11 THE COURT: You're married?

12 PROSPECTIVE JUROR #8: Yes.

13 THE COURT: Are you working?

14 PROSPECTIVE JUROR #8: No. I'm a student.

15 THE COURT: Okay. All right. Your husband, what
16 does he do?

17 PROSPECTIVE JUROR #8: My husband is a driver, a
18 yellow cab.

19 THE COURT: Any children, ma'am?

20 PROSPECTIVE JUROR #8: No.

21 THE COURT: Any areas of interest or hobbies
22 you'd care to mention?

23 PROSPECTIVE JUROR #8: My hobby is go to church,
24 the school and then sometimes I read newspaper.

25 THE COURT: What newspaper do you read?

1 PROSPECTIVE JUROR #8: I read Daily News and
2 recently my Koran newspaper.

3 THE COURT: Do you have any friends or relatives
4 in law enforcement? Know any lawyers, judges?

5 PROSPECTIVE JUROR #8: No.

6 THE COURT: Police officers?

7 PROSPECTIVE JUROR #8: I have my father's cousin
8 is a police officer.

9 THE COURT: Do you think that relationship, at
10 least knowing about that relationship, would that affect
11 your ability to be fair?

12 PROSPECTIVE JUROR #8: I don't think so.

13 THE COURT: Do you have any opinion about the
14 criminal justice system which would affect your ability to
15 be fair?

16 PROSPECTIVE JUROR #8: No, I don't think so.

17 THE COURT: Were you, a family member or friend
18 ever the victim of a crime? Car stolen, house burglarized,
19 anything like that?

20 PROSPECTIVE JUROR #8: No.

21 THE COURT: Were you ever accused of a crime?

22 PROSPECTIVE JUROR #8: No.

23 THE COURT: What about a family member or friend
24 ever being accused?

25 PROSPECTIVE JUROR #8: I don't have no friends.

1 THE COURT: All right: You don't?

2 PROSPECTIVE JUROR #8: No.

3 THE COURT: Have you ever served on a jury
4 before?

5 PROSPECTIVE JUROR #8: Yes.

6 THE COURT: Civil or criminal?

7 PROSPECTIVE JUROR #8: It was criminal.

8 THE COURT: How long ago was that?

9 PROSPECTIVE JUROR #8: That was 1996.

10 THE COURT: Now, was it here in Kings County?

11 PROSPECTIVE JUROR #8: It was in -- I don't
12 remember.

13 THE COURT: Were you living here in Brooklyn at
14 the time?

15 PROSPECTIVE JUROR #8: Yes. In the same area.

16 THE COURT: The case, do you remember what kind
17 of charge was involved?

18 PROSPECTIVE JUROR #8: I think this was a
19 criminal case, but it's like a death penalty case.

20 THE COURT: Let me ask you this: How many jurors
21 were there? Were there twelve or were there six?

22 PROSPECTIVE JUROR #8: I don't remember how many,
23 but we have a lot of people there.

24 THE COURT: Were you actually on the jury that
25 decided the case?

1 PROSPECTIVE JUROR #8: They were asking me
2 questions, but I wasn't staying on this case.

3 THE COURT: So they let you go?

4 PROSPECTIVE JUROR #8: I doing two days only.

5 THE COURT: It's probably a civil case, probably
6 a civil case.

7 Is there any reason why you couldn't sit on this
8 case?

9 PROSPECTIVE JUROR #8: Just because I go to
10 school, that's the only reason.

11 THE COURT: What are your hours at school?

12 PROSPECTIVE JUROR #8: I'm taking the --

13 THE COURT: Your hours. Do you go in the
14 morning?

15 PROSPECTIVE JUROR #8: Yes. I have classes at 2
16 o'clock starting.

17 THE COURT: Two o'clock. That would present a
18 problem, for us at least.

19 Counsel, do I have your consents?

20 MS. GREGORY: Yes.

21 MR. RODRIGUEZ: Yes.

22 THE COURT: Ma'am, you're not off jury duty, just
23 off this case. I guess what you should probably do is go
24 downstairs and tell them you're a student. And good luck.
25 You're off this case, not off jury duty.

Voir Dire

58

1 THE COURT: Mr. Connor.

2 PROSPECTIVE JUROR #7: DeShawn Connor, 23.

3 Brownsville.

4 High school graduate. I work for Century 21.

5 MR. RODRIGUEZ: I can't here.

6 THE COURT: He works for Century 21.

7 Just back up. Your first name again.

8 PROSPECTIVE JUROR #7: DeShawn.

9 THE COURT: You're 23?

10 PROSPECTIVE JUROR #7: Yes.

11 THE COURT: Area of Brooklyn you reside in?

12 PROSPECTIVE JUROR #7: Brownsville.

13 THE COURT: High school, you said?

14 PROSPECTIVE JUROR #7: Yes.

15 THE COURT: And you're working?

16 PROSPECTIVE JUROR #7: Century 21.

17 THE COURT: Married? Single? Divorced?

18 PROSPECTIVE JUROR #7: Single.

19 THE COURT: Any children?

20 PROSPECTIVE JUROR #7: No.

21 THE COURT: Any areas of interest or hobbies
22 you'd care to mention?

23 PROSPECTIVE JUROR #7: No.

24 THE COURT: No sports?

25 PROSPECTIVE JUROR #7: No.

KL

1 THE COURT: Do you belong to any organizations
2 you'd care to mention?

3 PROSPECTIVE JUROR #7: No.

4 THE COURT: Favorite newspaper?

5 PROSPECTIVE JUROR #7: No.

6 THE COURT: How do you get your news then?
7 Television?

8 PROSPECTIVE JUROR #7: Channel One.

9 THE COURT: Channel One, Okay.

10 Any friends or relatives in law enforcement?

11 PROSPECTIVE JUROR #7: No.

12 THE COURT: Do you have any opinion about the
13 criminal justice system which would affect your ability to
14 be fair?

15 PROSPECTIVE JUROR #7: No.

16 THE COURT: Were you ever the victim of a crime?
17 Car stolen, house burglarized, anything like that?

18 PROSPECTIVE JUROR #7: No.

19 THE COURT: What about a friend or family member
20 ever been the victim of a crime?

21 PROSPECTIVE JUROR #7: No.

22 THE COURT: Ever accused of a crime?

23 PROSPECTIVE JUROR #7: No.

24 THE COURT: As far as you know, any family member
25 or friend ever accused?

Voir Dire

60

1 PROSPECTIVE JUROR #7: No.

2 THE COURT: Any prior jury service, or this is
3 your first time?

4 PROSPECTIVE JUROR #7: First time.

5 THE COURT: Any reason why you could not sit on
6 this case?

7 PROSPECTIVE JUROR #7: No.

8 THE COURT: All right.

9 Folks, I need to speak with Miss Corley
10 privately. Once that's done, we'll come back and I'll
11 allow at least one of the lawyers, maybe both of them, to
12 speak with you. Just step out of the courtroom, please.
13 Don't discuss this case. We'll have you back in a moment.

14 Miss Corley, allow them to get past you, but then
15 remain.

16 (Whereupon, the prospective jurors exited the
17 courtroom with the exception of Prospective Juror #6.)

18 THE COURT: Miss Corley, if you will, you had
19 indicated someone had been the victim of a crime?

20 PROSPECTIVE JUROR #6: It was myself.

21 THE COURT: What happened?

22 PROSPECTIVE JUROR #6: It was a mugging.

23 THE COURT: How long ago was that?

24 PROSPECTIVE JUROR #6: Maybe ten years ago.

25 THE COURT: Were you physically injured during

1 the course of the mugging?

2 PROSPECTIVE JUROR #6: No.

3 THE COURT: Did you go to the hospital or did you
4 engage any counseling after the mugging?

5 PROSPECTIVE JUROR #6: Not in counseling, no. It
6 was reported and the person was convicted.

7 THE COURT: Okay. So the person -- it was
8 reported and an arrest was made and there was a conviction?

9 PROSPECTIVE JUROR #6: Uh-hum.

10 THE COURT: Did you have to testify?

11 PROSPECTIVE JUROR #6: Yes.

12 THE COURT: That happened here in Kings County?

13 PROSPECTIVE JUROR #6: Yes.

14 THE COURT: Anything about that circumstance that
15 would affect your ability to sit on this case?

16 PROSPECTIVE JUROR #6: No.

17 THE COURT: All right. Do you remember who the
18 assistant district attorney was?

19 PROSPECTIVE JUROR #6: I can't remember.

20 THE COURT: What about the police officers who
21 were involved, do you remember who they were?

22 PROSPECTIVE JUROR #6: No.

23 THE COURT: Now, what about somebody being
24 accused of a crime?

25 PROSPECTIVE JUROR #6: Yes.

Voir Dire

62

1 THE COURT: Who was that?

2 PROSPECTIVE JUROR #6: That was my brothers.

3 THE COURT: What was he accused of doing?

4 PROSPECTIVE JUROR #6: We're not that close, but
5 I know that they're, I think -- I'm not sure what they were
6 convicted of.

7 THE COURT: You say he was convicted of
8 something?

9 PROSPECTIVE JUROR #6: Yes.

10 THE COURT: How long ago was he convicted? Is it
11 one brother or more than one brother?

12 PROSPECTIVE JUROR #6: More than one brother. It
13 was two.

14 THE COURT: Let me ask you this: The two
15 brothers, now are they currently incarcerated someplace?

16 PROSPECTIVE JUROR #6: Yes.

17 THE COURT: Is that Upstate someplace?

18 PROSPECTIVE JUROR #6: Yes.

19 THE COURT: So they were convicted of felonies?

20 PROSPECTIVE JUROR #6: Right.

21 THE COURT: Did you ever go to any of the
22 proceedings involving the brothers?

23 PROSPECTIVE JUROR #6: No.

24 THE COURT: How did you find out? Through the
25 other family members?

KL

Voir Dire

63

1 PROSPECTIVE JUROR #6: Yes.

2 THE COURT: Do you have any opinion, do you have
3 any opinion as to whether they were treated fairly or
4 unfairly?

5 PROSPECTIVE JUROR #6: I don't have an opinion.

6 THE COURT: Does your family have any opinion as
7 to whether your brothers were treated fairly or unfairly?

8 PROSPECTIVE JUROR #6: No.

9 THE COURT: Do you think the fact that you have
10 two brothers who were incarcerated, who are incarcerated,
11 would that affect your ability to be fair?

12 PROSPECTIVE JUROR #6: No.

13 THE COURT: Now, as far as you know, were they
14 arrested and convicted here in Kings County?

15 PROSPECTIVE JUROR #6: Yes.

16 THE COURT: So the same office, that was the DA's
17 office, that sort of represented you when you were a
18 complainant, prosecuted your brothers, is that correct?

19 PROSPECTIVE JUROR #6: I have no idea.

20 THE COURT: Okay. All right.

21 Either side, any questions about her being the
22 victim or her brothers being accused? I'll only allow you
23 to ask those questions here privately now. Either side,
24 anything?

25 Miss Gregory?

KL

Voir Dire

64

1 MS. GREGORY: I don't have anything.

2 THE COURT: Mr. Rodriguez?

3 MR. RODRIGUEZ: No.

4 THE COURT: Ma'am, just step outside.

5 (Whereupon, Prospective Juror #6 exited the
6 courtroom.)

7 THE COURT: Miss Gregory, how long do you think
8 your voir dire is going to be?

9 MS. GREGORY: About 15 minutes, your Honor.

10 THE COURT: That will take us beyond the lunch
11 hours. Let's get the jurors back in.

12 I tell you what, tell everybody back outside
13 2:15. Not 2:30, 2:15 promptly. Okay?

14 COURT OFFICER: Yes, Judge.

15 THE COURT: With that, I will see you all this
16 afternoon. Try to get here a little before 2:15, Okay?
17 But we're going to try to start promptly at 2:15.

18 You might want to wait and let the jurors clear
19 the floor before counsel leaves, though.

20 MR. RODRIGUEZ: Yeah, I'm not going to leave yet.

21 (Whereupon, the luncheon recess was taken.)
22
23
24
25

1 AFTERNOON SESSION:

2 (Case on trial continued. Whereupon the jury
3 panel entered the courtroom and resumed their seats.)

4 MR. RODRIGUEZ: Before we proceed, may we
5 approach one second, your Honor?

6 THE COURT: Certainly may.

7 (Off-the-record bench conference.)

8 (Whereupon, the following occurred at sidebar,
9 out of the presence and hearing of the prospective jurors:)

10 MR. RODRIGUEZ: I have a problem with the way the
11 building is, I guess set up. My client's in. And he's in,
12 and we go through the machinations to try to avoid this
13 jury from knowing that he's in, such that we allow them to
14 leave, we leave later and such. But in coming into the
15 courtroom today, we could not get in. The jurors were in
16 the hallway and obviously saw myself, obviously saw the
17 assistant out in the hallway. My client was not there.
18 When they came in, he was seated at the table, the defense
19 table, and in close proximity to two court officers. There
20 is a possibility that I believe that this veneer is tainted
21 as a result of the manner in which the jurors were brought
22 in and he was there and the fact that they were present in
23 the hallway as we came in. Because now I believe that
24 they're aware that my client's in.

25 THE COURT: Miss Gregory?

1 MS. GREGORY: Your Honor, I don't have any real
2 position on it.

3 Obviously we were outside with the jurors. It's
4 happened in the other building as well, that situation has
5 happened to me. So I don't --

6 THE COURT: Well, I'm not going to be
7 presumptuous in that regard either.

8 Let me just say this, counsel: The Court was on
9 the bench, the clerk was there, the reporter was there, the
10 court officers were in place. The jurors could assume that
11 we were there and you were late.

12 MR. RODRIGUEZ: Well, the problems is the doors
13 were locked; we couldn't get in.

14 THE COURT: Only you would know that, counsel.
15 When the court officer came, he let people in at that
16 point.

17 MR. RODRIGUEZ: No. The problem was I came and
18 the assistant district attorney both came and attempted to
19 open the door and the doors were locked.

20 MS. GREGORY: That's true. Then we went around.

21 MR. RODRIGUEZ: Then we went around to get away.
22 And it was obvious that the doors were locked. And all the
23 jurors were sitting and standing right near the door.

24 THE COURT: But they were told to remain outside.
25 I understand. Okay, you have your objection.

1 MR. RODRIGUEZ: I made my record.

2 THE COURT: And the Court feels at this point
3 that your position is rather presumptuous. And if you feel
4 like you want to voir dire on it, you can, but you do it at
5 your peril.

6 MR. RODRIGUEZ: I made my record. I don't think
7 I'm going to move on it.

8 THE COURT: Okay.

9 (Open court.)

10 THE CLERK: Case on trial. All parties are
11 present.

12 THE COURT: Counsel, Juror Number Twelve had
13 indicated that -- Prospective Juror Number Twelve had
14 indicated she has some language problem. Does either side
15 want to pursue this any further or do I have your consents
16 in terms of asking her to return to Central Jury?

17 MR. RODRIGUEZ: I will consent, your Honor.

18 MS. GREGORY: I consent, your Honor.

19 THE COURT: Miss Gregory, please proceed.

20 Ten minutes or less, ma'am, please.

21 MS. GREGORY: Thank you, your Honor.

22 Good afternoon, ladies and gentlemen.

23 Again, my name is Miss Gregory. I'm an assistant
24 DA, and I'll be handling this case.

25 This is the time both of us lawyers get to talk

1 to you. And after the trial starts, if you're selected as
2 a juror in this case, we won't be able to talk to you
3 anymore directly and have you answer questions. So I'm
4 going to ask some questions of the group here.

5 And I'd ask that the people in the audience
6 listen too, so when it's your turn if you have a response
7 to something that's been raised here, you can let us know
8 too. Okay?

9 And as the Judge said, there are no right or
10 wrong answers. We're just trying to get a feel if you'll
11 be a good juror for this particular case. And if not, then
12 there are other cases.

13 I believe the Judge was explaining that, you
14 know, the witnesses in this case are going to come in here
15 and they're going to get in that chair and they're going to
16 answer questions, and that's going to be testimony.

17 Miss Ebron, so the witness is going to take the
18 stand and give responses to questions that are asked of him
19 or her.

20 What I'm trying to get across to you and the rest
21 of the potential jurors here is that what that witness
22 says, that is testimony.

23 PROSPECTIVE JUROR #1: Yes.

24 MS. GREGORY: Does everyone understand that? So
25 it's the same as if there were physical evidence, say if

1 there was a robbery and somebody had a weapon.

2 MR. RODRIGUEZ: Objection, your Honor.

3 THE COURT: What's the objection, counsel?

4 MR. RODRIGUEZ: It's not the same as physical
5 evidence. And it may -- there are many distinctions
6 between what physical evidence is and what testimonial
7 evidence is.

8 MS. GREGORY: I'll rephrase it, your Honor.

9 MR. RODRIGUEZ: Thank you.

10 THE COURT: Just disregard the colloquy between
11 counsel. Also the colloquy between counsel and the Court.

12 Please understand that anything these lawyers say
13 at this point, it's not evidence. They're trying to elicit
14 an opinion from you.

15 Please proceed.

16 MS. GREGORY: Thank you, your Honor.

17 Miss Small-English, again, if I mispronounce one
18 of your names, let me know. And I apologize in advance.

19 What if in an instance -- let's say you were
20 picked as a juror for this trial and you hear from the one
21 witness in the case, and that's the person that the crime
22 happened to. And that's the only thing you heard. There
23 were no other eyewitnesses; just had this one person coming
24 in and telling you what happened to them on this one
25 particular occasion.

1 Let's say you believed that witness; you found
2 them to be credible and you believed them beyond a
3 reasonable doubt.

4 Is there anything about the fact that it was just
5 one witness that you'd be basing your decision on as a
6 juror, is there anything about the way that you were raised
7 or your life experience that you would say, "Okay, I didn't
8 have a problem with what that person was saying, but I need
9 more than just that one witness"?

10 PROSPECTIVE JUROR #2: No. I have to hear what
11 she had to say.

12 MS. GREGORY: So if you found that witness
13 believable, you'd be able to base a decision just on that
14 one witness?

15 PROSPECTIVE JUROR #2: Yes.

16 MS. GREGORY: What about you, Mr. Ellis?

17 PROSPECTIVE JUROR #3: No.

18 MS. GREGORY: You wouldn't be able to?

19 THE COURT: Mr. Ellis, the law is simply this:
20 It's not a question of the number of witnesses. It's the
21 quality of the testimony. You can convict on the basis of
22 one witness, provided you believe the witness beyond a
23 reasonable doubt.

24 PROSPECTIVE JUROR #3: If the witness' testimony
25 was sufficient, then I would have to.

1 THE COURT: Unfortunately, she did not phrase it
2 that way. It's not the number of witnesses, it's the
3 quality of the testimony. And you can convict on the basis
4 of one witness, provided you believe that witness beyond a
5 reasonable doubt.

6 Okay?

7 PROSPECTIVE JUROR #3: Okay.

8 MS. GREGORY: So you'd be able to follow the
9 Judge's ruling if you believed the person? I'm not saying
10 if you didn't.

11 PROSPECTIVE JUROR #3: Right.

12 MS. GREGORY: Is there anybody here who'd say
13 "no. I'd need more than just that one person"?

14 What about you, Miss Lawrence?

15 PROSPECTIVE JUROR #13: It's just depending on
16 how the witness put their testimony across. If it was
17 jumbled --

18 MS. GREGORY: Okay. But the point that I had
19 made with Miss English was that if you believed the person.

20 PROSPECTIVE JUROR #13: If I believed them --

21 MS. GREGORY: Right. And there's nothing that --
22 I mean, you haven't heard anything yet, so you don't know.

23 PROSPECTIVE JUROR #13: No.

24 MS. GREGORY: But if you believed the person, the
25 fact that it was just one person --

Voir Dire

72

1 PROSPECTIVE JUROR #13: That would be good.

2 MS. GREGORY: Okay, thank you.

3 Miss Duda, good afternoon. How are you?

4 PROSPECTIVE JUROR #5: Good afternoon.

5 MS. GREGORY: Is it a fair thing to say that
6 people react to stressful situations differently?

7 PROSPECTIVE JUROR #5: Yes.

8 MS. GREGORY: If the witness in this case comes
9 in and explains what happened to her and how she reacted,
10 and if you were selected as a juror in this case and you
11 thought to yourself, "I wouldn't have reacted that way,"
12 would that automatically make you disqualify what the
13 witness had to say?

14 PROSPECTIVE JUROR #5: No. You can't put
15 yourself in the trial. I would have to listen and believe
16 this person.

17 MR. RODRIGUEZ: I'm sorry, your Honor.

18 I couldn't hear you.

19 PROSPECTIVE JUROR #5: I said you can't put your
20 personality, your feelings, inside the trial. I mean, you
21 have to objectively, like --

22 MS. GREGORY: Treat them objectively?

23 PROSPECTIVE JUROR #5: Yes.

24 THE COURT: That's absolutely right, ma'am.

25 PROSPECTIVE JUROR #5: Excuse me?

KL

1 THE COURT: That's absolutely right.

2 MS. GREGORY: So it's fair to say that people
3 have different reactions to something that they might
4 perceive as stressful?

5 PROSPECTIVE JUROR #5: Yes.

6 MS. GREGORY: Miss Corley, good afternoon. How
7 are you?

8 PROSPECTIVE JUROR #6: I'm Okay.

9 MS. GREGORY: What if you heard that the witness
10 was, you know, coming home late. I believe the Judge
11 indicated that the crime in this case happened between 4
12 and 5 o'clock in the morning. And the witness in this case
13 is a young woman in her twenties. Does that fact alone,
14 that someone maybe was out doing something, that you'd
15 think, "well, if the person wasn't out at that hour of the
16 morning or that early in the morning," you know, "you
17 shouldn't have been out," do you feel -- let me ask you, do
18 you feel just because someone was out late, they don't
19 deserve the protection of the law?

20 PROSPECTIVE JUROR #6: No.

21 MS. GREGORY: Is there anybody that doesn't agree
22 with what Miss Corley's opinion was?

23 Mr. Connor, how are you?

24 PROSPECTIVE JUROR #7: All right.

25 MS. GREGORY: You understand this case is about a

1 sexual assault? That's what the Judge indicated.

2 PROSPECTIVE JUROR #7: (Shakes head up and down.)

3 MS. GREGORY: Do you think there's any specific
4 way that a person who is the complaining witness in that
5 type of case, a sexual assault, do you think there's any
6 way that they should behave when they're telling you about
7 that incident? Do you expect them to cry? Do you expect
8 them to be one way or another?

9 PROSPECTIVE JUROR #7: No.

10 MS. GREGORY: Is it fair to say that, you know,
11 the victim, the witness in this case, might cry, or might
12 not?

13 PROSPECTIVE JUROR #7: Yeah.

14 MS. GREGORY: And that's something that some of
15 your other people had said that I'm going to ask you if you
16 agree with, is it not based on so much how the witness says
17 something, but whether you believe it or not and whether
18 you find it credible?

19 PROSPECTIVE JUROR #7: Yes.

20 MS. GREGORY: So not more or less believable if
21 someone cries or not?

22 PROSPECTIVE JUROR #7: No.

23 MS. GREGORY: Could you imagine, Mr. Robinson,
24 that a witness in a sexual assault case might not cry when
25 she comes in to testify? Could you imagine that scenario?

1 PROSPECTIVE JUROR #9: No.

2 MS. GREGORY: What if the witness had to like
3 steel herself to come in, you know, and she had to be
4 stoic?

5 MR. RODRIGUEZ: Objection, your Honor.

6 THE COURT: Yeah, sustained.

7 MS. GREGORY: Well, let me ask you, if the
8 witness didn't cry --

9 MR. RODRIGUEZ: Objection.

10 THE COURT: What's the objection, counsel?

11 MR. RODRIGUEZ: She says if the witness -- do you
12 want me to make the objection right now?

13 THE COURT: Sure.

14 What I'm saying at this point is this: Nothing
15 she's saying is evidence. Is it conceivable to you that a
16 person can come in and tell a story without tears or is it
17 conceivable the person can come in and tell a story with
18 tears. Both answers should be yes.

19 The question ultimately is you must base your
20 decision on the quality of the testimony. As Miss Duda
21 said, you've got to be objective. You cannot allow that to
22 influence the decision you make here.

23 PROSPECTIVE JUROR #9: Yes, sir.

24 THE COURT: Please proceed.

25 MS. GREGORY: Thank you, your Honor.

Voir Dire

76

1 Mr. Coleman, how are you?

2 PROSPECTIVE JUROR #10: Rookwood.

3 MS. GREGORY: I'm sorry.

4 I'm going to ask you, you've heard that this
5 incident happened in 2002, and now here we are in 2005. Do
6 you think that time affects people's recall?

7 PROSPECTIVE JUROR #10: I guess so.

8 MS. GREGORY: Okay. So let me ask you, if I was
9 asking you about what you had for dinner yesterday, you'd
10 have a pretty good recall about that?

11 PROSPECTIVE JUROR #10: Yes.

12 MS. GREGORY: And then if I asked you today, you
13 know, what you had a couple of months ago on a specific
14 day, your recall might not be as --

15 PROSPECTIVE JUROR #10: Good as yesterday.

16 MS. GREGORY: Okay.

17 Can you understand, and bear -- not bear. Could
18 you understand that a person who gave their account of how
19 something happened on more than one occasion and then time
20 passed and then they came to you during the trial, you're a
21 witness -- you're a juror in that trial and --

22 MR. RODRIGUEZ: Objection.

23 THE COURT: I don't know exactly -- look, the
24 fact that you may not be able to recall what you had for
25 dinner say two weeks ago doesn't mean you didn't have

1 dinner. And ultimately that's the issue you have to decide
2 here, was a crime committed and did the defendant do it, on
3 the basis of whatever this witness has to say and what
4 other evidence they have.

5 Can you do that?

6 PROSPECTIVE JUROR #10: Yes, sir.

7 MS. GREGORY: I'm just going to delve in a little
8 bit further on that.

9 If the person didn't use the exact same words as
10 they might have used three years ago than they're using
11 today, would that automatically make you disqualify what
12 they had to say and not believe them?

13 PROSPECTIVE JUROR #10: No. I'd have to listen
14 to what the evidence is at this time and judge them.
15 Because I can't judge them on the last statements.

16 MS. GREGORY: Right. And I think it's fair to
17 say, obviously, big points of your life, an account of
18 something that happened to you, you may recall, but not
19 every specific individual point would you necessarily
20 recall, and that doesn't necessarily mean that it didn't
21 happen?

22 PROSPECTIVE JUROR #10: Right. At this point,
23 yeah.

24 MS. GREGORY: Miss Coleman, good afternoon. How
25 are you?

1 PROSPECTIVE JUROR #11: Hi.

2 MS. GREGORY: Do you have a certain image in your
3 head -- you told us that you read the papers and you watch
4 television?

5 PROSPECTIVE JUROR #11: Yes.

6 MS. GREGORY: Do you have any specific image in
7 your head of what a sex offender looks like?

8 PROSPECTIVE JUROR #11: No. It could be --

9 MR. RODRIGUEZ: Objection.

10 THE COURT: The objection is sustained. The
11 objection is sustained.

12 MS. GREGORY: Is it fair to say that a sex
13 offender could look like anybody?

14 MR. RODRIGUEZ: Objection, your Honor.

15 THE COURT: Sustained.

16 PROSPECTIVE JUROR #11: Yes.

17 THE COURT: I understand that.

18 Ma'am, look, you may have some preconceived
19 notions. They can't come in to play here. They really
20 can't. You have to look at this with a blank mind and
21 examine the evidence objectively.

22 PROSPECTIVE JUROR #11: Yes.

23 THE COURT: That's what you have to do.

24 MS. GREGORY: Miss Lawrence, if you were selected
25 as a juror in this case and you sat and you listened

Voir Dire

79

1 thoughtfully to the evidence that you heard in the case and
2 you looked at any physical evidence that came into the
3 case, if you believed that I had presented my case and you
4 found the witnesses credible beyond a reasonable doubt,
5 would you be able to come back with a guilty verdict, if
6 you believed that?

7 PROSPECTIVE JUROR #13: Yes.

8 MS. GREGORY: How about the rest of you?
9 Is there anybody here that couldn't do that? Obviously you
10 haven't heard anything yet. But I'm saying, if you were
11 selected and you sat through this all and you believed the
12 evidence beyond a reasonable doubt, would you be able to
13 come back with a guilty verdict?

14 PROSPECTIVE JUROR #11: Yes.

15 THE COURT: Lawyers try to make this like law
16 school.

17 Let me say this, they want to ask it, in any
18 event, this is the rule: If after hearing the evidence you
19 have a reasonable doubt as to defendant's guilt, you must
20 acquit.

21 If you feel based on the evidence he is guilty
22 beyond a reasonable doubt, you must convict.

23 That's the rule. You have no choice.

24 Please proceed.

25 MS. GREGORY: That's all, your Honor. Thank you.

KL

Voir Dire

80

1 Thank you ladies and gentlemen.

2 THE COURT: Mr. Rodriguez.

3 MR. RODRIGUEZ: Thank you.

4 Ladies and gentlemen, good afternoon.

5 Again, as Miss Gregory stated, I ask that you all
6 listen so that we can avoid asking the same questions
7 continuously. All right?

8 And if you have any questions, during the course
9 of while I'm asking questions, if you have a question, you
10 have a concern about your ability to be a fair juror,
11 please, please, now is the time to say something.

12 Voir dire means to speak the truth. So this is
13 the time to speak the truth. This is what this is, voir
14 dire, speak the truth.

15 And the reason for that is that Jose Fuentes sits
16 here charged with a very serious crime. So we need whoever
17 is going to make the decision about whether or not he's
18 guilty or innocent of charges brought from the prosecution,
19 we need to know that you can view these charges fairly; not
20 be swayed by bias, not be swayed by the severity of the
21 crime.

22 You know, do you mind if I just point to you and
23 not call your name? Does anyone have a problem with that?
24 It's not disrespectful or anything, but it makes it easier
25 for me.

1 This is a crime, the charges are rape. Very
2 serious charges.

3 Would you agree with that?

4 PROSPECTIVE JUROR #13: Yes.

5 MR. RODRIGUEZ: Okay. And the woman at the time
6 was a young woman, much like your age. And she's going to
7 take the stand and you're going to see her there and think,
8 "well, she's about my age. That could have been me."

9 Do you agree that that's something that could
10 come in your mind?

11 PROSPECTIVE JUROR #13: Yeah.

12 MR. RODRIGUEZ: Yeah. And it's such a horrible
13 thing. And no one disagrees with the severity of the
14 crime, if it happened, all right. If it's true, no one
15 disagrees with that. But when you see her sit there, are
16 you going to be able to put your feelings of sympathy,
17 empathy, you know, of kind of connecting with her because
18 you're in the same age, are you going to be able to put
19 that aside?

20 PROSPECTIVE JUROR #13: I don't think the same
21 age really has anything to do with it. Any kind of crime
22 that happened to anybody, so if you walk around feeling
23 just because it happened to one person, that doesn't mean
24 it's going to happen to you.

25 MR. RODRIGUEZ: Or that it even happened.

1 PROSPECTIVE JUROR #13: Yes, that's true.

2 MR. RODRIGUEZ: Because there's an indictment
3 here, it's a piece of paper. That's what brings the case
4 to this courtroom. That's the charges. It's going to be
5 read at one point. You're going to hear the charges. And
6 they're ugly charges.

7 But when you hear them, can you put that aside,
8 what you've heard in that document, and only make a
9 decision from what comes from this bench, if you believe
10 it? Can you do that?

11 Can you do that? Can you base guilt or innocence
12 strictly upon whether or not the prosecution proves their
13 case? Can you do that?

14 PROSPECTIVE JUROR #3: If it's believable.

15 MR. RODRIGUEZ: Okay. Now, getting back to this.
16 She mentioned testimony, right.

17 Testimony is like any evidence. Testimony is one
18 thing, but evidence is another. Anybody can sit up there
19 and say something, right, ma'am? Anybody can put their
20 hand up and swear to tell the truth, the whole truth and
21 nothing but the truth so help me God, take their seat and
22 swear to you, look at you, cry and say "this is what
23 happened to me."

24 Does that make it true necessarily?

25 PROSPECTIVE JUROR #11: No.

1 MR. RODRIGUEZ: And in fact, one thing the
2 prosecutor talked about is whether someone makes prior
3 statements that are different than another statement.
4 Isn't that the way you tell whether someone is being
5 truthful or not, if their story changes over a period of
6 time?

7 PROSPECTIVE JUROR #11: Yes.

8 MR. RODRIGUEZ: Would you consider that, the
9 changed story, with whether they're being honest, truthful?
10 Would you agree with that, ma'am?

11 PROSPECTIVE JUROR #1: Yes.

12 MR. RODRIGUEZ: How about you?

13 PROSPECTIVE JUROR #2: Yes.

14 MR. RODRIGUEZ: And you?

15 PROSPECTIVE JUROR #5: Yes.

16 MR. RODRIGUEZ: And you?

17 PROSPECTIVE JUROR #6: Yes.

18 MR. RODRIGUEZ: So while you may not remember
19 dinner three, four weeks ago -- maybe you might -- but if
20 things start changing, it's something you could consider,
21 Okay.

22 Just like tears don't mean -- the lack of tears
23 don't mean that it didn't happen, tears don't mean that it
24 did, right? Agree with that?

25 PROSPECTIVE JUROR #6: Yes.

1 MR. RODRIGUEZ: Okay. Now, no one here had
2 family members the victim of a crime, right, anything like
3 that, right?

4 Have you ever been in a situation where you have
5 felt threatened by anyone, by a male or anything like that,
6 on a personal level?

7 MS. GREGORY: Objection, your Honor.

8 THE COURT: Yeah. No, we're not going down that
9 road, counsel.

10 Just like trying to describe what a sex offender
11 looks like, please.

12 MR. RODRIGUEZ: I'll move on.

13 But there's nothing in your history that would
14 prevent you from being fair to a man charged with rape,
15 right?

16 PROSPECTIVE JUROR #2: I have no problems with
17 that.

18 MR. RODRIGUEZ: You, anything in your history?

19 PROSPECTIVE JUROR #1: No.

20 MR. RODRIGUEZ: Anyone, family member, anything
21 in your history that would prevent you from being fair?

22 PROSPECTIVE JUROR #13: No.

23 MR. RODRIGUEZ: As he sits here, the Judge has
24 told you he has the presumption of innocence, he's presumed
25 innocent.

1 Does anybody have a problem with the fact that
2 he's sitting here presumed innocent?

3 You understand the presumption of innocence,
4 you're viewed as innocent unless and until you're proved to
5 be guilty, all right.

6 And we don't have -- there's something called a
7 burden of proof. The Judge is going to describe that for
8 you, what the burden of proof is. But one of the things is
9 that means the case has to be proved from this table. They
10 have to prove that he's guilty of anything.

11 It also means that the presumption of innocence,
12 burden of proof, means that he doesn't have to take the
13 stand. I don't have to ask -- he doesn't have to say one
14 question, be asked one question, take the stand and say
15 anything. I don't have to put in one piece of evidence. I
16 can sit back and do absolutely nothing. If they don't
17 prove their case, you have to acquit.

18 Do you understand that? Do you agree with that?
19 Do you agree with that?

20 PROSPECTIVE JUROR #10: Yes.

21 MR. RODRIGUEZ: Do you have any children?

22 PROSPECTIVE JUROR #10: Yes.

23 MR. RODRIGUEZ: How many kids you got?

24 PROSPECTIVE JUROR #10: Five kids.

25 MR. RODRIGUEZ: Any close in age?

Voir Dire

86

1 PROSPECTIVE JUROR #10: I don't know how old he
2 is. Close in age to what?

3 MR. RODRIGUEZ: Like a four-year-old and
4 five-year-old, close in age.

5 PROSPECTIVE JUROR #10: Yes. I have a twelve and
6 a ten.

7 MR. RODRIGUEZ: Now, this twelve and ten, has
8 there ever been a question about what happened, what
9 happened, and you ask one what happened, right, you ask the
10 other what happened?

11 PROSPECTIVE JUROR #5: Yes.

12 MR. RODRIGUEZ: Do you understand in a trial, in
13 our system of things, you don't have to hear from him? You
14 know, the one who accuses, it's like my grandmother said,
15 "point one finger, three fingers point back at you."

16 You don't have to, you don't have to hear from
17 him. Can you accept that?

18 PROSPECTIVE JUROR #10: I can.

19 MR. RODRIGUEZ: Now, you may not hear from him in
20 this case.

21 PROSPECTIVE JUROR #10: I understand that.

22 MR. RODRIGUEZ: Can you understand that?

23 PROSPECTIVE JUROR #9: Yes.

24 MR. RODRIGUEZ: Can you understand that?

25 PROSPECTIVE JUROR #7: Yes.

KL

1 MR. RODRIGUEZ: Now, one of the things you're
2 going to hear, you may hear people take the stand sometimes
3 and they've done things in their lives that are not right.
4 Can you weigh those things that they've done in other
5 instances and promise me that you will not make a decision
6 should you hear that somebody did something bad in some
7 other instance and not use that as a sole basis for
8 determining whether or not this person is guilty of this
9 case? Can you promise me that?

10 PROSPECTIVE JUROR #10: Yeah.

11 MR. RODRIGUEZ: Can you promise me that?

12 PROSPECTIVE JUROR #11: Yes.

13 MR. RODRIGUEZ: Can you?

14 PROSPECTIVE JUROR #5: Yes.

15 MR. RODRIGUEZ: Can you?

16 PROSPECTIVE JUROR #6: Yes.

17 MR. RODRIGUEZ: You?

18 PROSPECTIVE JUROR #13: Yes.

19 MR. RODRIGUEZ: You?

20 PROSPECTIVE JUROR #9: Yes.

21 MR. RODRIGUEZ: You?

22 PROSPECTIVE JUROR #7: Yes.

23 MR. RODRIGUEZ: Can you?

24 PROSPECTIVE JUROR #1: Yes.

25 MR. RODRIGUEZ: You?

Voir Dire

88

1 PROSPECTIVE JUROR #2: Yes.

2 MR. RODRIGUEZ: And you?

3 PROSPECTIVE JUROR #3: Yes.

4 MR. RODRIGUEZ: Now, during the course of this
5 case, there are different types of witnesses you're going
6 to hear from.

7 You may hear from a witness who was present when
8 something happened. Like the complaining witness,
9 obviously, is the person who is accusing my client. She's
10 obviously one type of witness. She's there to see what
11 happened.

12 You may also hear from what they call expert
13 witnesses or people who will come in here and offer you
14 opinions.

15 Now, you, each of you come here with something,
16 you all come here with opinions, but you all come here with
17 common sense. And in determining whether to believe a
18 witness who takes the stand, any witness, I don't care if
19 it's a lay witness, an expert witness, you always use your
20 common sense in making the determination whether or not you
21 want to give credibility to what is said.

22 Do you understand?

23 Is there any reason why your opinion is any worse
24 than anyone else's?

25 PROSPECTIVE JUROR #3: No.

KL

1 MR. RODRIGUEZ: You have a right to your opinion,
2 right?

3 PROSPECTIVE JUROR #2: Yes.

4 MR. RODRIGUEZ: You have experience in life,
5 right?

6 PROSPECTIVE JUROR #2: Yes.

7 MR. RODRIGUEZ: You bring that experience
8 with you everywhere you go?

9 PROSPECTIVE JUROR #2: Yes.

10 MR. RODRIGUEZ: If you hear something that
11 doesn't make sense to you, flies in the face of your
12 experiences in life, will you use that as a determination
13 whether or not you give something credibility?

14 THE COURT: Again, if an expert witness comes in,
15 you're free to accept or reject that witness' opinion, just
16 as you would any other witness.

17 PROSPECTIVE JUROR #2: Yes, sir.

18 THE COURT: The witness is able to give the
19 opinion because of his experience or expertise in a certain
20 area, but is treated like any other witness.

21 Counsel is asking you questions without giving
22 you some background information to begin with.

23 And any witness is to be treated, they're all to
24 be treated the same. So regardless of what they say, you
25 listen to it and you decide "do I accept it or reject it"

1 using your common sense and life experiences.

2 Okay?

3 PROSPECTIVE JUROR #2: Yes, sir.

4 THE COURT: Please proceed.

5 MR. RODRIGUEZ: Can you agree with that also?

6 PROSPECTIVE JUROR #1: Yes.

7 MR. RODRIGUEZ: Can you?

8 PROSPECTIVE JUROR #7: Yes.

9 MR. RODRIGUEZ: Can you?

10 PROSPECTIVE JUROR #9: Yes.

11 MR. RODRIGUEZ: Can you?

12 PROSPECTIVE JUROR #10: Yes.

13 MR. RODRIGUEZ: Does anyone disagree with that?

14 How are you doing?

15 PROSPECTIVE JUROR #6: I'm fine.

16 MR. RODRIGUEZ: Now, the Judge is going to tell

17 you the elements of a crime, of whatever crime, whatever

18 number of elements. There may be one, may be five

19 elements, whatever the number of elements of any charge.

20 Can you follow the Judge's instructions that tell you that

21 the People must prove each and every element?

22 Let's say there's five elements; they can't prove

23 four.

24 THE COURT: Stay away from that. That's really

25 relating to the burden of proof. I'll deal with that.

1 The bottom line, you must be convinced beyond a
2 reasonable doubt of the defendant's guilt to convict.

3 If you're not, you must acquit.

4 For the moment, that's all you need to know.

5 MR. RODRIGUEZ: And one of the things that the
6 prosecutor talked about is people react differently to
7 stress, and that anyone is subject to a different reaction.

8 But there are other things besides stress that
9 cause people to react, correct? Perhaps the entire story
10 is not true, that's something that might be a reason why
11 people react the way they do. Perhaps they don't want to
12 say anything because of other reasons.

13 You know, just because I or the prosecutor throw
14 it out there doesn't mean it's true. You have to make the
15 decision whether or not it's truthful. You have to make
16 the decision whether or not people's failure to react is
17 based on stress or something else. Those are the decisions
18 you all make.

19 Can you all promise me that if you're chosen on
20 this jury, that you will do so, that you will make a
21 decision based upon what you believe the facts of the case
22 are?

23 Can you do that?

24 PROSPECTIVE JUROR #1: Yes.

25 MR. RODRIGUEZ: You?

1 PROSPECTIVE JUROR #2: Yes.
2 MR. RODRIGUEZ: You?
3 PROSPECTIVE JUROR #7: Yes.
4 MR. RODRIGUEZ: You?
5 PROSPECTIVE JUROR #9: Yes.
6 MR. RODRIGUEZ: You?
7 PROSPECTIVE JUROR #5: Yes.
8 MR. RODRIGUEZ: You?
9 PROSPECTIVE JUROR #6: Yes.
10 MR. RODRIGUEZ: You?
11 PROSPECTIVE JUROR #13: Yes.
12 MR. RODRIGUEZ: And finally, finally, if she
13 fails, if the prosecution fails to prove their case beyond
14 a reasonable doubt, will you acquit my client?
15 PROSPECTIVE JUROR #13: Yes.
16 MR. RODRIGUEZ: Will you?
17 PROSPECTIVE JUROR #6: Yes.
18 MR. RODRIGUEZ: Ma'am?
19 PROSPECTIVE JUROR #11: Yes.
20 MR. RODRIGUEZ: Will you?
21 PROSPECTIVE JUROR #5: Yes.
22 MR. RODRIGUEZ: And you?
23 PROSPECTIVE JUROR #10: Yes.
24 MR. RODRIGUEZ: You?
25 PROSPECTIVE JUROR #9: Yes.

1 MR. RODRIGUEZ: You?

2 PROSPECTIVE JUROR #7: Yes.

3 MR. RODRIGUEZ: You?

4 PROSPECTIVE JUROR #3: Yes.

5 MR. RODRIGUEZ: You?

6 PROSPECTIVE JUROR #2: Yes.

7 MR. RODRIGUEZ: And you?

8 PROSPECTIVE JUROR #1: Yes.

9 MR. RODRIGUEZ: Notwithstanding these are serious
10 charges, that woman may sit up there and cry, but if you
11 don't believe it, you're not going to allow sympathy to
12 affect you? Can you promise me that you will not allow
13 sympathy or feeling bad for her, if they don't prove their
14 case, can you promise me you'll send my client home and
15 acquit him?

16 PROSPECTIVE JUROR #1: Yes.

17 MR. RODRIGUEZ: Can you?

18 PROSPECTIVE JUROR #2: Yes.

19 MR. RODRIGUEZ: Everyone?

20 PROSPECTIVE JURORS: (Chorus of yes.)

21 MR. RODRIGUEZ: Any questions?

22 Thank you very much for your time.

23 THE COURT: Those of you in the audience, just
24 step outside. Don't leave the floor.

25 Those in the box, just step outside.

1 We'll have you back in a moment.

2 Don't discuss the case, any aspects of it. Just
3 step outside, please.

4 (Whereupon, all prospective jurors exited the
5 courtroom.)

6 THE COURT: I'm just going to remind counsel,
7 during the course of their voir dire, just think about what
8 you're saying.

9 Mr. Rodriguez, you did indicate at the end that
10 if they found your client not guilty, would they send him
11 home.

12 MR. RODRIGUEZ: I know. I caught myself. It
13 just ran right out of my mouth.

14 THE COURT: I understand.

15 Okay. In any event, just think about what you're
16 saying.

17 All right. Now, are we ready?

18 THE CLERK: I believe so.

19 Judge, we previously excused jurors four, eight
20 twelve and 14.

21 THE COURT: Call the names out.

22 THE CLERK: David Debellotte, Muriel Francois,
23 number twelve I can't pronounce it, she was the language,
24 and number 14, Christina Landy.

25 THE COURT: That's correct.

Voir Dire

95

1 Okay. Then please proceed.

2 THE CLERK: Entire panel for cause, People?

3 MS. GREGORY: None.

4 THE COURT: Defense?

5 MR. RODRIGUEZ: None.

6 THE CLERK: Entire panel peremptorily, People?

7 MS. GREGORY: Number seven.

8 MR. RODRIGUEZ: Who's that?

9 MS. GREGORY: Mr. Connor.

10 MR. RODRIGUEZ: Okay.

11 MS. GREGORY: Number nine, Mr. Robinson.

12 And number 11, Miss Coleman.

13 THE CLERK: Defense?

14 MR. RODRIGUEZ: Could I see the board a minute.

15 THE CLERK: Certainly may.

16 Mr. Connor was sitting in seat number seven.

17 THE COURT: In the back.

18 MR. RODRIGUEZ: Up in the back?

19 THE COURT: That's correct.

20 MR. RODRIGUEZ: Seat number one.

21 THE COURT: Ebron you're challenging?

22 MR. RODRIGUEZ: Yes, Ebron.

23 Seat number two.

24 THE COURT: Small-English.

25 MR. RODRIGUEZ: Seat five.

KL

Voir Dire

96

1 THE COURT: Duda.

2 MR. RODRIGUEZ: And I don't know what number he
3 was, Mr. Rookwood.

4 THE COURT: Number ten.

5 MR. RODRIGUEZ: That's it.

6 THE CLERK: Juror #3, Robert Ellis, is our first
7 juror selected.

8 Juror #6, Michelle Corley, second juror selected.

9 MR. RODRIGUEZ: I thought I got --

10 THE COURT: You got Duda, number five.

11 MR. RODRIGUEZ: I thought I said six too.

12 THE CLERK: Do you wish to exercise a challenge?

13 MR. RODRIGUEZ: Yes.

14 THE COURT: Are you challenging Duda now?

15 MR. RODRIGUEZ: And Corley, number six.

16 THE CLERK: Corley is challenged by the defense.

17 Then the second juror selected is Dana Lawrence.

18 And both those jurors are acceptable to both

19 sides?

20 MR. RODRIGUEZ: Yes.

21 MS. GREGORY: Yes.

22 THE CLERK: Then we have two jurors.

23 THE COURT: Would you get Miss Lawrence and Mr.
24 Ellis in, please.

25 THE CLERK: Counsel, People have exercised three

KL

1 challenges, the defense five.

2 Do you concur?

3 MR. RODRIGUEZ: That's correct.

4 MS. GREGORY: Yes.

5 (Whereupon the two selected jurors entered the
6 courtroom.)

7 THE COURT: Just in the front row will be fine.

8 Mr. Ellis, Miss Lawrence, the both of you were
9 selected to sit on this case. I'm going to give you some
10 rules to govern your conduct. When you're sworn, I'll
11 repeat these rules.

12 In a moment you're going to be shown where the
13 jury room is. Once you know that, you're to be back here
14 tomorrow 12 noon, Okay.

15 Keep an open mind. Do not form, or express, any
16 opinion as to the guilt or non-guilt of this defendant
17 until you've heard all the evidence, you've heard the
18 closing arguments of the attorneys, I've instructed you on
19 the law, you've gone into the jury room and began jury
20 deliberations.

21 Do not discuss this case with anyone; not even
22 among yourselves. Do not listen to anybody else talking
23 about this case in your presence.

24 Do not visit any scene alleged to be involved
25 here.

1 Do not try to investigate any fact on your own.
2 Do not read, watch or listen to any accounts of this case
3 should there be any in the news media.

4 And if you have a computer and surf the Internet
5 trying to get information, do not do it in terms of trying
6 to get information about this case or anybody involved with
7 the case.

8 Immediately report any attempts by anyone to
9 approach you or a fellow juror in connection with your jury
10 service.

11 And until you're discharged, you're not to accept
12 compensation or discuss the acceptance of compensation for
13 supplying information about this case with anyone.

14 With those warnings in mind, follow the officers.
15 They're going to show you where the jury room is. Once
16 you've satisfied yourself you know where it is, tomorrow at
17 12:00.

18 (Whereupon, the selected jurors exited the
19 courtroom.)

20 THE COURT: What I would like is the people who
21 were in the audience in the courtroom again.

22 Those in the box will go back down to Central
23 Jury.

24 But have the people seated in the audience come
25 in first.

1 (Whereupon, the prospective jurors in the
2 audience entered the courtroom.)

3 THE COURT: Those of you in the audience, Mr.
4 LaRose is going to call the names of 14 of you. Please
5 take your seats as indicated.

6 THE CLERK: Sharon Wilson, take seat number one,
7 ma'am. W-I-L-S-O-N.

8 Leo Reilly R -E-I-L-L-Y, seat number two.

9 Carmen Layne, L-A-Y-N-E, seat three.

10 James Leighton, L-E-I-G-H-T-O-N, seat four.

11 Daniel Jensen, J-E-N-S-E-N, seat five, please.

12 Morris John, J-O-H-N, seat six, please.

13 Alexander Marants, last name is spelled
14 M-A-R-A-N-T-S, seat 7, please.

15 Crystal Logan, last name is spelled L-O-G-A-N,
16 seat eight, please.

17 Anna Rozenblat, last name is spelled
18 R-O-Z-E-N-B-L-A-T, seat nine.

19 Jeanine James, last name is spelled J-A-M-E-S,
20 seat ten.

21 Daniel Tandy, last name is spelled T-A-N-D-Y,
22 seat 11.

23 Tamara Sklyar, S-K-L-Y-A-R, seat twelve.

24 Joseph Wright, last name is spelled W-R-I-G-H-T,
25 seat 13.

1 Veronica Thomas, T-H-O-M-A-S, seat 14.

2 THE COURT: Those of you who are in the box, were
3 you able to hear my comments about the rules that apply in
4 all criminal cases, the indictment not being evidence, the
5 defendant being presumed innocent, the burden of proof
6 being on the prosecution, a defendant having no obligation
7 to testify, the standard of proof being, the standard being
8 proof beyond a reasonable doubt? Were you able to hear
9 those rules earlier?

10 The bottom line is this: Is there anyone who
11 feels that he or she cannot follow those principles?
12 Anybody?

13 I've introduced the lawyers, as well as the
14 defendant. Any of these people seem familiar to you to the
15 extent that you might of seen them before coming into the
16 courtroom on the street?

17 I read some names. Any of the names sound
18 familiar, Gina Colon, Tammy Little, Police Officer Kevin
19 Fedynak, Nurse Durant, Woodhull Hospital, Nurse Dan
20 McSwiggan, Detective Steven Litwin, Marie Samples, Don
21 Lewittes, Aubry Weekes, any of those names sound familiar?

22 And finally, I know you may know the area, but
23 I'm more concerned about anybody working, living or
24 visiting in and about 474 Marcy Avenue on a regular basis.
25 Anybody?

1 All right.

2 Then Miss Wilson, do you have the questionnaire?

3 Please, in a loud, clear voice, just go right down.

4 PROSPECTIVE JUROR #1: Sharon Wilson.

5 Forty-eight. I live in Fort Greene.

6 College. Stock coordinator. Soon to be

7 officially divorced. Two children.

8 Cooking. No organizations. No favorite

9 newspapers.

10 THE COURT: Any friends or relatives in law

11 enforcement, ma'am?

12 PROSPECTIVE JUROR #1: No.

13 THE COURT: Any opinion about the criminal

14 justice system which would affect your ability to be fair?

15 PROSPECTIVE JUROR #1: No.

16 THE COURT: Were you, a family member or friend

17 ever the victim of a crime?

18 PROSPECTIVE JUROR #1: No.

19 THE COURT: Ever accused of a crime?

20 PROSPECTIVE JUROR #1: No.

21 THE COURT: What about a family member or friend?

22 PROSPECTIVE JUROR #1: No.

23 THE COURT: Any prior jury experience in terms of

24 you actually being a juror?

25 PROSPECTIVE JUROR #1: No.

1 THE COURT: Is there any reason why you could not
2 sit here?

3 PROSPECTIVE JUROR #1: No.

4 THE COURT: Thank you.

5 Mr. Reilly, if you will, please, sir.

6 PROSPECTIVE JUROR #2: Yes.

7 Leo Reilly. I'm 34. I live in Sunset Park.

8 I have a high school diploma, one year of
9 college.

10 I'm a maintenance supervisor for the Transit
11 Authority.

12 Never married. Single. No children.

13 No interests or hobbies to mention.

14 No organizations.

15 THE COURT: Favorite newspaper?

16 PROSPECTIVE JUROR #2: I read The News and The
17 Post.

18 THE COURT: Any friends or relatives in law
19 enforcement?

20 PROSPECTIVE JUROR #2: I have some friends in law
21 enforcement, but not --

22 THE COURT: Are these police officers, correction
23 officers, judges, lawyers?

24 PROSPECTIVE JUROR #2: Police officers.

25 THE COURT: Do you think those relationships

1 would affect your ability to be fair?

2 PROSPECTIVE JUROR #2: No.

3 THE COURT: Any opinion about the criminal
4 justice system which would affect your ability to be fair?

5 PROSPECTIVE JUROR #2: No.

6 THE COURT: Were you ever the victim of a crime?

7 PROSPECTIVE JUROR #2: Yes. I was mugged once.

8 THE COURT: How long ago?

9 PROSPECTIVE JUROR #2: That was around '95.

10 THE COURT: Were you physically injured during
11 the course of the mugging so you had to be hospitalized?

12 PROSPECTIVE JUROR #2: No.

13 THE COURT: Do you think that circumstance would
14 affect your ability to be fair?

15 PROSPECTIVE JUROR #2: No.

16 THE COURT: Any friend or relative ever the
17 victim of a crime?

18 PROSPECTIVE JUROR #2: No.

19 THE COURT: Ever accused of a crime?

20 PROSPECTIVE JUROR #2: Yes.

21 THE COURT: You?

22 PROSPECTIVE JUROR #2: Yes.

23 THE COURT: Obviously it didn't amount to much
24 because you wouldn't be here otherwise. What about a
25 friend or family member?

1 PROSPECTIVE JUROR #2: Yes.

2 THE COURT: Okay. We'll take that privately.

3 Any prior jury experience in terms of you
4 actually sitting on a jury?

5 PROSPECTIVE JUROR #2: No.

6 THE COURT: Is there any reason why you couldn't
7 sit?

8 PROSPECTIVE JUROR #2: No.

9 THE COURT: Thank you.

10 Miss Layne, if you will.

11 PROSPECTIVE JUROR #3: Carmen Layne. Sixty-one.

12 I live in Canarsie.

13 College. Registered nurse. Divorced. I have
14 two kids.

15 No interests. No organization.

16 I read The Daily News.

17 THE COURT: Any friends or relatives in law
18 enforcement?

19 PROSPECTIVE JUROR #3: No.

20 THE COURT: Any opinion about the criminal
21 justice system which would affect your ability to be fair?

22 PROSPECTIVE JUROR #3: No.

23 THE COURT: Were you, a family member or friend
24 ever the victim of a crime?

25 PROSPECTIVE JUROR #3: No.

Voir Dire

105

1 THE COURT: Were you ever accused of a crime?

2 PROSPECTIVE JUROR #3: No.

3 THE COURT: As far as you know, any family member
4 or friend ever accused?

5 PROSPECTIVE JUROR #3: No.

6 THE COURT: Any prior jury service where you
7 actually sat on a jury or were a member of a grand jury,
8 anything like that?

9 PROSPECTIVE JUROR #3: I was elected, but the case
10 was dismissed.

11 THE COURT: You were selected?

12 PROSPECTIVE JUROR #3: Yes.

13 THE COURT: It was a civil case?

14 PROSPECTIVE JUROR #3: It was a civil.

15 THE COURT: And they settled it?

16 PROSPECTIVE JUROR #3: They settled it.

17 THE COURT: And you were discharged?

18 PROSPECTIVE JUROR #3: Yes.

19 THE COURT: How long ago was that, ma'am?

20 PROSPECTIVE JUROR #3: '98.

21 THE COURT: Anything about that experience that
22 would affect your ability to sit on this case?

23 PROSPECTIVE JUROR #3: No.

24 THE COURT: Okay. Is there any reason, any
25 reason why you could not sit on this case?

KL

1 PROSPECTIVE JUROR #3: One. I have treated the
2 victim of a rape before in the hospital.

3 THE COURT: Okay. I think we'll take that one
4 privately.

5 I'll make a note of it, ma'am. We'll speak to
6 you privately about it.

7 Mr. Leighton.

8 PROSPECTIVE JUROR #4: James Leighton.
9 Twenty-five. Live in Williamsburg.

10 Have a BFA in photography. Work in photography.

11 Single. No children.

12 Interests involving work, photography, art.

13 No organizations.

14 THE COURT: Favorite newspaper?

15 PROSPECTIVE JUROR #4: The Times.

16 THE COURT: Any friends or relatives in law
17 enforcement?

18 PROSPECTIVE JUROR #4: No.

19 THE COURT: Any opinion about the criminal
20 justice system which would affect your ability to be fair?

21 PROSPECTIVE JUROR #4: No.

22 THE COURT: Were you, a family member or friend
23 ever the victim of a crime?

24 PROSPECTIVE JUROR #4: Yes.

25 THE COURT: What are we talking about?

1 PROSPECTIVE JUROR #4: Both.

2 THE COURT: Are you able to talk about it
3 publicly? ?

4 PROSPECTIVE JUROR #4: I'd rather do it in
5 private.

6 THE COURT: Not a problem.

7 Ever accused of a crime?

8 PROSPECTIVE JUROR #4: No.

9 THE COURT: Any family member or friend ever
10 accused?

11 PROSPECTIVE JUROR #4: No.

12 THE COURT: Any prior jury service?

13 PROSPECTIVE JUROR #4: Not serving, no.

14 THE COURT: Any reason why you couldn't sit?

15 PROSPECTIVE JUROR #4: No.

16 THE COURT: Mr. Jensen, if you will, please.

17 PROSPECTIVE JUROR #5: Daniel Jensen.

18 Twenty-five. Park Slope.

19 College. I'm an actor. And I work in the
20 theatre as a day job.

21 Single.

22 Music, theatre.

23 THE COURT: Have you been in any productions on
24 TV or anything like that?

25 PROSPECTIVE JUROR #5: Nothing you've seen.

1 Mostly stage.

2 And read The New York Times.

3 THE COURT: Any friends or relatives in law
4 enforcement?

5 PROSPECTIVE JUROR #5: I have two uncles that are
6 police officers in Detroit.

7 THE COURT: Do you think those relationships
8 would affect your ability to be fair and impartial in this
9 case?

10 PROSPECTIVE JUROR #5: No.

11 THE COURT: Any opinion about the criminal
12 justice system which would affect your ability to be fair?

13 PROSPECTIVE JUROR #5: No.

14 THE COURT: Ever the victim of a crime?

15 PROSPECTIVE JUROR #5: I was mugged once.

16 THE COURT: Are you able to talk about it
17 publicly?

18 PROSPECTIVE JUROR #5: Yeah.

19 THE COURT: What happened?

20 PROSPECTIVE JUROR #5 : Someone pulled a knife on
21 me and asked for my money.

22 THE COURT: Were you physically injured at all?

23 PROSPECTIVE JUROR #5: No.

24 THE COURT: Did you call the police?

25 PROSPECTIVE JUROR #5: Yes.

Voir Dire

109

1 THE COURT: Any arrests made?

2 PROSPECTIVE JUROR #5: No.

3 THE COURT: Do you think that circumstance would
4 affect your ability to sit on a criminal case?

5 PROSPECTIVE JUROR #5: No.

6 THE COURT: Any friend or family member, as far
7 as you know, ever the victim of a crime?

8 PROSPECTIVE JUROR #5: No.

9 THE COURT: Ever accused of a crime?

10 PROSPECTIVE JUROR #5: No.

11 THE COURT: Any family member or friend ever
12 accused?

13 PROSPECTIVE JUROR #5: No.

14 THE COURT: Is there any prior jury service?

15 PROSPECTIVE JUROR #5: No.

16 THE COURT: First time?

17 PROSPECTIVE JUROR #5: Uh-hum.

18 THE COURT: Is there any reason why you can't
19 sit?

20 PROSPECTIVE JUROR #5: No.

21 THE COURT: Thank you.

22 Mr. John, if you will, please.

23 PROSPECTIVE JUROR #6: Morris John.

24 Twenty-eight. Live in East New York.

25 College and trade school.

1 I'm a Honda technician.

2 Married. Three kids.

3 THE COURT: Your wife, what does she do, sir?

4 PROSPECTIVE JUROR #6: She's studying to be a
5 nurse.

6 THE COURT: Any areas of interest or hobbies
7 you'd care to mention?

8 PROSPECTIVE JUROR #6: Not really.

9 THE COURT: Just to get you to talk. But if
10 you've got none, you've got none.

11 Belong to any organizations?

12 PROSPECTIVE JUROR #6: No.

13 THE COURT: Favorite newspaper?

14 PROSPECTIVE JUROR #6: Not really.

15 THE COURT: How do you get your news then?
16 Through television?

17 PROSPECTIVE JUROR #6: Yes.

18 THE COURT: Any friends or relatives in law
19 enforcement?

20 PROSPECTIVE JUROR #6: Yeah, friends.

21 THE COURT: Do you think those relationships
22 would affect your ability to be fair?

23 PROSPECTIVE JUROR #6: No.

24 THE COURT: Any opinion about the criminal
25 justice system which would affect your ability to be fair?

1 PROSPECTIVE JUROR #6: No.

2 THE COURT: Were you, a family member or friend
3 ever the victim of a crime?

4 PROSPECTIVE JUROR #6: Cars stolen, that's all.

5 THE COURT: Do you think that circumstance would
6 affect your ability to be fair?

7 PROSPECTIVE JUROR #6: No.

8 THE COURT: Were you, a family member or friend
9 ever accused of a crime?

10 PROSPECTIVE JUROR #6: No.

11 THE COURT: Any prior jury service?

12 PROSPECTIVE JUROR #6: No.

13 THE COURT: First time?

14 PROSPECTIVE JUROR #6: Yeah.

15 THE COURT: Is there any reason why you can't
16 sit?

17 PROSPECTIVE JUROR #6: No.

18 THE COURT: Thank you, sir.

19 Mr. Wright, if you will, please, sir.

20 PROSPECTIVE JUROR #13: Joseph Wright.

21 Twenty-eight years old. I live in Flatbush area.

22 Completed high school. One year of college. I'm
23 a clerical jeweler.

24 I'm single. I had a daughter. She passed four
25 months ago.

1 Play basketball?

2 THE COURT: Are you a Knick fan?

3 PROSPECTIVE JUROR #13: No.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR #13: I read The Post.

6 THE COURT: You go back to front or front to
7 back?

8 PROSPECTIVE JUROR #13: Front to back.

9 THE COURT: You do, huh? Are you sure you're a
10 sports fan?

11 PROSPECTIVE JUROR #13: Yeah.

12 THE COURT: Okay. Any friends or relatives in
13 law enforcement, sir?

14 PROSPECTIVE JUROR #13: My sister. She's a
15 corrections officer.

16 THE COURT: Do you think that relationship would
17 affect your ability to be fair?

18 PROSPECTIVE JUROR #13: No.

19 THE COURT: Any opinion about the criminal
20 justice system which would affect your ability to be fair?

21 PROSPECTIVE JUROR #13: No.

22 THE COURT: Were you, a family member or friend
23 ever the victim of a crime?

24 PROSPECTIVE JUROR #13: Yeah. I was robbed at
25 gunpoint. And another occasion I was shot at.

1 THE COURT: The robbery, how long ago was that?

2 PROSPECTIVE JUROR #13: The robbery was a year
3 ago.

4 THE COURT: Did you report that to the police?

5 PROSPECTIVE JUROR #13: Yeah.

6 THE COURT: Any arrest made there?

7 PROSPECTIVE JUROR #13: No.

8 THE COURT: And the shooting, what happened
9 there?

10 PROSPECTIVE JUROR #13: I was at a basketball
11 game. I was supposed to play that night. I was in the
12 crowd in the bleachers, you know, for about an hour,
13 because I had the last game. And a guy came up to me and
14 said, "can I get my stuff behind you?"

15 So I said, "no problem."

16 I stood up for a minute. A kid, looked around 18
17 years old, slid down in my seat. And I said, "you're in my
18 seat."

19 Long story short, his friend stood up, said
20 "don't let him talk to you like that." So he stood up,
21 backed out a gun.

22 A friend of mine that was hosting the basketball
23 game ran across the court to stop the situation. He kind
24 of separated us.

25 I went to the other half of the court. Something

1 told me, you know, "it's not the place for you to be," so I
2 jogged out of the park. As I'm jogging out the park to get
3 to my car, I hear somebody say "Yo."

4 I turn around. He's about ten feet from me
5 pointing a gun at me and fired three shots at me.

6 THE COURT: Did you call the police?

7 PROSPECTIVE JUROR #13: No.

8 THE COURT: Okay. Do you think that circumstance
9 would affect your ability to sit on a criminal case?

10 PROSPECTIVE JUROR #13: No.

11 THE COURT: Any friends or family member ever
12 accused of a crime?

13 PROSPECTIVE JUROR #13: I was accused of a crime.

14 THE COURT: We'll take that one privately.

15 Have you ever sat on a jury before?

16 PROSPECTIVE JUROR #13: No. First time.

17 THE COURT: First time?

18 PROSPECTIVE JUROR #13: Yeah.

19 THE COURT: All right. Is there any reason why
20 you can't sit?

21 PROSPECTIVE JUROR #13: No.

22 THE COURT: Thank you, sir. We'll talk to you
23 privately, though.

24 Miss Thomas, if you will, please.

25 PROSPECTIVE JUROR #14: Veronica Thomas. Age 38.

1 I live in East Flatbush.

2 College. I'm an executive administrative
3 assistant.

4 Married.

5 THE COURT: Your husband, what does he do, ma'am?

6 PROSPECTIVE JUROR #14: He's a sales specialist
7 and construction worker.

8 THE COURT: Any children?

9 PROSPECTIVE JUROR #14: Yes. One daughter.

10 THE COURT: Any areas of interests or hobbies
11 you'd care to mention?

12 PROSPECTIVE JUROR #14: Entertaining and
13 traveling.

14 THE COURT: Do you belong to any organizations
15 you'd care to mention?

16 PROSPECTIVE JUROR #14: No.

17 THE COURT: Favorite newspaper?

18 PROSPECTIVE JUROR #14: I read all of them, but
19 mainly The Daily News.

20 THE COURT: Any friends or relatives in law
21 enforcement?

22 PROSPECTIVE JUROR #14: No.

23 THE COURT: Any opinion about the criminal
24 justice system which would affect your ability to be fair?

25 PROSPECTIVE JUROR #14: No.

1 THE COURT: Were you ever the victim of a crime?

2 PROSPECTIVE JUROR #14: I was robbed. But like,
3 I don't know, ten or more years ago.

4 THE COURT: Were you physically injured during
5 the robbery?

6 PROSPECTIVE JUROR #14: No.

7 THE COURT: Was that reported to the police?

8 PROSPECTIVE JUROR #14: Yes.

9 THE COURT: Any arrests made?

10 PROSPECTIVE JUROR #14: No.

11 THE COURT: Do you think what happened to you ten
12 years ago, would that affect your ability to sit on this
13 case?

14 PROSPECTIVE JUROR #14: Definitely not.

15 THE COURT: What about a family member or friend
16 ever having been the victim of a crime?

17 PROSPECTIVE JUROR #14: No, I can't recall.

18 THE COURT: Ever accused of a crime?

19 PROSPECTIVE JUROR #14: Harassment, is that a
20 crime?

21 THE COURT: It's a violation.

22 PROSPECTIVE JUROR #14: No.

23 THE COURT: We'll take that one privately. No,
24 it's a non-criminal offense, ma'am.

25 PROSPECTIVE JUROR #14: So the answer is no.

1 THE COURT: But we'll discuss that privately.

2 Any prior jury service?

3 PROSPECTIVE JUROR #14: Yes, 2000.

4 THE COURT: What kind of case?

5 PROSPECTIVE JUROR #14: Civil. Like an
6 automobile.

7 THE COURT: Did you actually sit and was there
8 deliberations or was it settled before?

9 PROSPECTIVE JUROR #14: No, it was settled
10 before. I left before. They didn't pick me.

11 THE COURT: Anything about your service on that
12 case, or that, I mean on that civil matter, would that
13 affect your ability to sit on this case?

14 PROSPECTIVE JUROR #14: No.

15 THE COURT: Is there any reason why you couldn't
16 sit?

17 PROSPECTIVE JUROR #14: Before?

18 THE COURT: Here.

19 PROSPECTIVE JUROR #14: Because I was also in an
20 accident. My case was also pending for the first.

21 THE COURT: That would be a good reason. That's
22 why they didn't let you sit?

23 PROSPECTIVE JUROR #14: That's why they didn't let
24 me sit.

25 THE COURT: Any reason you can't sit here on this

1 case?

2 PROSPECTIVE JUROR #14: Oh, I can sit here. No
3 problem.

4 THE COURT: Thank you, ma'am.
5 Miss Sklyar.

6 PROSPECTIVE JUROR #12: I don't be speaking
7 English.

8 THE COURT: You're doing fine.
9 We'll speak to you privately.

10 Mr. Tandy.

11 PROSPECTIVE JUROR #11: Daniel Tandy. Age 55.
12 Live in Bay Ridge.

13 College. I'm a member of the New York Stock
14 Exchange.

15 Married. My wife works in marketing. Three
16 children. Two over 18, one under.

17 I'm a member and fund-raiser for the Centurion
18 Foundation.

19 I read The Times front to back and Post back to
20 front.

21 Chief Scagnelli from Transit is a very close
22 friend.

23 THE COURT: Would you allow that relationship to
24 affect your ability to be fair here?

25 PROSPECTIVE JUROR #11: No.

1 THE COURT: Any opinion about the criminal
2 justice system which would affect your ability to be fair?

3 PROSPECTIVE JUROR #11: No.

4 THE COURT: Were you, a family member or friend
5 ever the victim of a crime?

6 PROSPECTIVE JUROR #11: Just car theft.

7 THE COURT: Do you think that circumstance would
8 affect your ability to sit on a criminal case?

9 PROSPECTIVE JUROR #11: No.

10 THE COURT: Ever accused of a crime?

11 PROSPECTIVE JUROR #11: No.

12 THE COURT: Any family member or friend ever
13 accused, as far as you know?

14 PROSPECTIVE JUROR #11: No.

15 THE COURT: Any prior jury service where you sat
16 on a jury or grand jury?

17 PROSPECTIVE JUROR #11: Not sat. I was selected
18 and the case was settled.

19 THE COURT: Civil case?

20 PROSPECTIVE JUROR #11: Civil.

21 THE COURT: Anything about your service on that
22 case that would affect your ability to sit on this case?

23 PROSPECTIVE JUROR #11: No.

24 THE COURT: Any reason why you couldn't sit here?

25 PROSPECTIVE JUROR #11: I hope not. But I should

1 mention that I have a stress test scheduled for Friday
2 morning. Which if I get picked I would try to reschedule
3 for the afternoon, based on what you said.

4 THE COURT: Well, if you are selected, we're
5 flexible in that regard. We may not be in session on
6 Friday. But if you get selected, you'll let us know.

7 PROSPECTIVE JUROR #11: Definitely.

8 THE COURT: Before you change the schedule, I
9 mean.

10 PROSPECTIVE JUROR #11: Oh. Okay, yes.

11 THE COURT: Miss James.

12 PROSPECTIVE JUROR #10: Jeanine James.

13 Twenty-nine. Live in Flatlands.

14 Highest level, law degree. Occupation, attorney.
15 Single.

16 THE COURT: What kind of cases? Are you a private
17 practitioner?

18 PROSPECTIVE JUROR #10: No. I work for a firm,
19 personal injury and real estate.

20 THE COURT: Yes, ma'am. Okay.

21 PROSPECTIVE JUROR #10: No kids.

22 Hobbies and interests are general.

23 All professional organizations.

24 I read The New York Times and the New York Law
25 Journal.

1 I have a lot of law enforcement friends.

2 THE COURT: Do you think those relationships
3 would affect your ability to be fair?

4 PROSPECTIVE JUROR #10: No.

5 THE COURT: More specifically, do you know any
6 lawyers who do criminal work?

7 PROSPECTIVE JUROR #10: Yes. I was an intern at
8 the DA's office.

9 THE COURT: This DA's office?

10 PROSPECTIVE JUROR #10: Yes.

11 THE COURT: When was that?

12 PROSPECTIVE JUROR #10: Five, six years ago.

13 THE COURT: Anything about that relationship that
14 would affect your ability to be fair and impartial?

15 PROSPECTIVE JUROR #10: No.

16 THE COURT: Any opinion about the system, the
17 criminal justice system, which would affect your ability to
18 be fair?

19 PROSPECTIVE JUROR #10: No.

20 THE COURT: Were you ever the victim of a crime?

21 PROSPECTIVE JUROR #10: Yes.

22 THE COURT: Are you able to talk about it
23 publicly?

24 PROSPECTIVE JUROR #10: Yes.

25 THE COURT: What happened?

1 PROSPECTIVE JUROR #10: My home was burglarized.

2 THE COURT: How long ago?

3 PROSPECTIVE JUROR #10: Ten years ago. Ten or

4 more.

5 THE COURT: Did you report that?

6 PROSPECTIVE JUROR #10: Yes.

7 THE COURT: Any arrests made?

8 PROSPECTIVE JUROR #10: No.

9 THE COURT: Do you think that circumstance would
10 affect your ability to be fair?

11 PROSPECTIVE JUROR #10: No.

12 THE COURT: To sit on the case?

13 PROSPECTIVE JUROR #10: No.

14 THE COURT: Any family member or friend, as far
15 as you know, the victim of a crime?

16 PROSPECTIVE JUROR #10: I think so, yeah.

17 THE COURT: What sort of things are we talking
18 about?

19 PROSPECTIVE JUROR #10: Muggings, burglary.

20 THE COURT: Again, do you think those, knowing
21 about those circumstances, would that affect your ability
22 to sit?

23 PROSPECTIVE JUROR #10: No.

24 THE COURT: Were you, a family member or friend
25 ever accused of a crime?

1 PROSPECTIVE JUROR #10: No.

2 THE COURT: Any prior jury service?

3 PROSPECTIVE JUROR #10: No.

4 THE COURT: Your first time?

5 PROSPECTIVE JUROR #10: First time.

6 THE COURT: Is there any reason why you couldn't
7 sit?

8 PROSPECTIVE JUROR #10: Not that I know of. Other
9 than what I told you.

10 THE COURT: Pardon?

11 PROSPECTIVE JUROR #10: Other than what I told
12 you, that's it.

13 THE COURT: All right.

14 Miss Rozenblat.

15 PROSPECTIVE JUROR #9: Anna Rozenblat.

16 Twenty-seven. I live in Midwood.

17 College. I'm a programmer.

18 Single. No children.

19 Interests, like art design.

20 No organizations.

21 New York Times.

22 THE COURT: Any friends or relatives in law
23 enforcement?

24 PROSPECTIVE JUROR #9: No.

25 THE COURT: Any opinion about the criminal

1 justice system which would affect your ability to be fair?

2 PROSPECTIVE JUROR #9: No.

3 THE COURT: Were you, a family member or friend
4 ever the victim of a crime?

5 PROSPECTIVE JUROR #9: Yeah. Actually --

6 THE COURT: Who are we talking about?

7 PROSPECTIVE JUROR #9: -- my cousin was raped
8 about five years ago.

9 THE COURT: I'll make a note it and we'll talk
10 about it privately. Okay.

11 Anyone ever accused of a crime, you, family
12 member or friend?

13 PROSPECTIVE JUROR #9: No.

14 THE COURT: Any prior jury service, ma'am?

15 PROSPECTIVE JUROR #9: No.

16 THE COURT: I'll reserve the last question until
17 after we speak with you.

18 Miss Logan, if you will, please, ma'am.

19 PROSPECTIVE JUROR #8: Crystal Logan. Live in
20 Bedford Stuyvesant. Got a high school diploma.

21 Not married. No kids.

22 Playing cards, that's all.

23 THE COURT: What do you play?

24 PROSPECTIVE JUROR #8: Spades.

25 THE COURT: Been a long time. Do you win,

1 though?

2 PROSPECTIVE JUROR #8: Yeah.

3 THE COURT: Do you belong to any organizations
4 you'd care to mention, ma'am?

5 PROSPECTIVE JUROR #8: No.

6 THE COURT: Do you read newspapers?

7 PROSPECTIVE JUROR #8: No.

8 THE COURT: How do you get your news? Through
9 television?

10 PROSPECTIVE JUROR #8: Channel One.

11 THE COURT: Okay. Any friends or relatives in
12 law enforcement?

13 PROSPECTIVE JUROR #8: No.

14 THE COURT: Any opinion about the criminal
15 justice system which would affect your ability to be fair?

16 PROSPECTIVE JUROR #8: No.

17 THE COURT: Were you, a family member or friend
18 ever the victim of a crime?

19 PROSPECTIVE JUROR #8: No.

20 THE COURT: Ever accused of a crime?

21 PROSPECTIVE JUROR #8: No.

22 THE COURT: As far as you know, any family member
23 or friend ever accused?

24 PROSPECTIVE JUROR #8: No.

25 THE COURT: Any prior jury service, or this is

1 your first time?

2 PROSPECTIVE JUROR #8: First time.

3 THE COURT: Are you nervous?

4 PROSPECTIVE JUROR #8: Huh?

5 THE COURT: Are you nervous?

6 PROSPECTIVE JUROR #8: (Shakes head from side to
7 side.)

8 THE COURT: Good. Is there any reason why you
9 couldn't sit on this case, ma'am?

10 PROSPECTIVE JUROR #8: No.

11 THE COURT: Thank you very much.

12 Mr. Marants, if you will, please, sir.

13 PROSPECTIVE JUROR #7: I'm afraid it's going to
14 be not enough my language to understand everything clearly.
15 Sorry.

16 THE COURT: All right.

17 Folks, if you will, just step outside, please.
18 We'll have you back in a moment.

19 Mr. Marants, just stay where you are.

20 Everybody else in the back, step outside. We'll
21 have you back.

22 (All prospective jurors exit the courtroom
23 except for Mr. Marants, Prospective Juror #7.)

24 THE COURT: Mr. Marants, have you been able to
25 understand some of the things that have been said here?

1 PROSPECTIVE JUROR #7: I understand I can say
2 like 60, 70 percent. But it's too fast. Sometimes you
3 talk too fast, it's not easy to get it. And not so easy to
4 get my personal, personal --

5 THE COURT: Opinion?

6 PROSPECTIVE JUROR #7: Opinion, yes.

7 THE COURT: Let me ask you this: We have a
8 reporter taking down the evidence that's going to come out.

9 PROSPECTIVE JUROR #7: I understand the evidence,
10 Okay.

11 THE COURT: At the jury's request he can read
12 this back to the jury.

13 Do you think if you were selected and if you
14 missed something, if he read it back slow enough for you,
15 would that help you in terms of being able to understand?

16 PROSPECTIVE JUROR #7: I'm afraid it's not going
17 to be easy for me.

18 THE COURT: Okay.

19 Counsel, in light of that answer, does either
20 side wish to pursue that any further?

21 MR. RODRIGUEZ: No, your Honor.

22 MS. GREGORY: No, your Honor.

23 THE COURT: Do I have your consents?

24 MS. GREGORY: Yes.

25 MR. RODRIGUEZ: Yes, your Honor.

1 THE COURT: Thank you very much. Return
2 downstairs to Central Jury, please.

3 I need Miss Rozenblat. She's number nine.

4 (Prospective Juror #7 exited the courtroom and
5 Prospective Juror #9 entered the courtroom.)

6 THE COURT: Just have a seat in the front row
7 there, ma'am.

8 If you will, please, give us your name again.

9 PROSPECTIVE JUROR #9: Anna Rozenblat.

10 THE COURT: You had indicated you had a cousin
11 who was raped?

12 PROSPECTIVE JUROR #9: Yes.

13 THE COURT: How long ago was that?

14 PROSPECTIVE JUROR #9: That was five years ago.

15 THE COURT: Where did that occur?

16 PROSPECTIVE JUROR #9: That was in Russia.

17 THE COURT: In Russia. Were the police called?

18 PROSPECTIVE JUROR #9: Like she called after two
19 days, and like they didn't believe she was raped. She
20 called a private car and she was raped by the driver. So
21 --

22 THE COURT: So was there any kind of arrest or
23 prosecution?

24 PROSPECTIVE JUROR #9: No.

25 THE COURT: Do you think because of what happened

1 to your friend -- cousin, would that affect your ability to
2 sit on this case and be a fair juror?

3 PROSPECTIVE JUROR #9: I, I guess I would
4 empathize with the girl, but I don't know. I mean, it
5 depends, of course, but I'm not sure, honestly. I'm not
6 sure. She, I remember she was so traumatized.

7 THE COURT: What I'm saying is this, and the law
8 requires that if a juror can't give his or her unequivocal
9 assurance, then they really can't sit: Are you saying that
10 unequivocally you could not be fair?

11 PROSPECTIVE JUROR #9: No. I could be fair. THE
12 COURT: But would you allow what happened to your cousin,
13 would that affect a decision you might make here?

14 PROSPECTIVE JUROR #9: I hope not.

15 THE COURT: When you say "hope," are you saying
16 that because you're nervous or you're uncertain?

17 PROSPECTIVE JUROR #9: I guess I'm uncertain.
18 But of course I would listen to the evidence and I would
19 try my best to be fair.

20 THE COURT: Okay. I appreciate it. We can
21 always find fair jurors. My problem is because you did say
22 that in part it is due to some uncertainty, I think we
23 ought to excuse you.

24 Do I have your consents, counsel?

25 MS. GREGORY: Yes.

1 MR. RODRIGUEZ: Yes, your Honor.

2 THE COURT: Thank you very much. Return to the
3 Central Jury, the large room you came from this morning.

4 PROSPECTIVE JUROR #9: Sorry.

5 THE COURT: No, no problem. It's best we know
6 now.

7 (Whereupon, Prospective Juror #9 exited the
8 courtroom.)

9 THE COURT: Counsel, do I need to bring in Miss
10 Sklyar? She's number 12.

11 MS. GREGORY: No, your Honor.

12 THE COURT: She indicated she had a language
13 concern.

14 MR. RODRIGUEZ: No.

15 THE COURT: All right.

16 Then if you will, get Miss Thomas in, please.
17 She's number 14.

18 (Whereupon, Prospective Juror #14 entered the
19 courtroom.)

20 THE COURT: Your name again, please?

21 PROSPECTIVE JUROR #14: Veronica Thomas.

22 THE COURT: You can sit down. I just, I wrote
23 the word "accused." Someone was accused of something?

24 PROSPECTIVE JUROR #14: Well, harassment.

25 THE COURT: And who was involved with that?

1 PROSPECTIVE JUROR #14: My husband was cheating
2 with this girl. And she called me. I called her and she
3 went to the DA. They called me into the police station.

4 THE COURT: Okay. Did it ultimately wind up
5 being a case in Criminal Court?

6 PROSPECTIVE JUROR #14: Yeah. 120 Schermerhorn.

7 THE COURT: Yes, ma'am. How long ago are we
8 talking about?

9 PROSPECTIVE JUROR #14: It happened October last
10 year.

11 THE COURT: And what happened to the case in the
12 end?

13 PROSPECTIVE JUROR #14: It was through in July.
14 I guess they said it was dismissed or sealed.

15 THE COURT: Did they give you an ACD or just an
16 outright dismissal, do you remember?

17 PROSPECTIVE JUROR #14: They just gave me a
18 letter and said July it would be dismissed. And it was, I
19 don't know if it was an ACD or what.

20 THE COURT: Did you have to retain a lawyer?

21 PROSPECTIVE JUROR #14: No.

22 THE COURT: Anything about that experience that
23 would affect your ability to sit on this case?

24 PROSPECTIVE JUROR #14: No.

25 THE COURT: Could you be a fair and impartial

1 juror?

2 PROSPECTIVE JUROR #14: I didn't hear you.

3 THE COURT: Could you be a fair and impartial
4 juror to both sides?

5 PROSPECTIVE JUROR #14: Definitely.

6 THE COURT: Miss Gregory, anything you want to
7 ask her about it?

8 MS. GREGORY: No.

9 THE COURT: Mr. Rodriguez, anything?

10 MR. RODRIGUEZ: Nothing. Thank you.

11 THE COURT: Ma'am, step outside.

12 PROSPECTIVE JUROR #14: Sure.

13 (Whereupon, Prospective Juror #14 exited the
14 courtroom.)

15 THE COURT: I need Mr. Wright.

16 (Whereupon, Prospective Juror #13 entered the
17 courtroom.)

18 THE COURT: Just have a seat. Your name again,
19 sir?

20 PROSPECTIVE JUROR #13: Joseph Wright.

21 THE COURT: Mr. Wright, I've got down here
22 someone had been accused of something.

23 PROSPECTIVE JUROR #13: Yeah. I was accused.

24 THE COURT: What were you accused of doing?

25 PROSPECTIVE JUROR #13: I was actually accused

1 for four different situations, all robberies, though. One
2 person said I robbed him at gunpoint, took a watch. The
3 other one said I took a wallet. Another one said I just
4 hit him.

5 THE COURT: When did all this happen?

6 PROSPECTIVE JUROR #13: But all this stemmed from
7 one situation. I was riding my bicycle. I had just left
8 my girlfriend at night. I was riding home, coming up a
9 one-way street and the police rode up behind me and said,
10 "sir, a young man just said you stole his bicycle."

11 So they said "you're going to have to wait right
12 here. This young man is going to come in the back of the
13 police car. And if he says it's you, we're going to have
14 to take you down."

15 And the young man said it was me. I was brought
16 Downtown Brooklyn and I was there for a little while. Then
17 they put me in a lineup, because they said they had a group
18 of guys who was doing robberies with bicycles. And I think
19 three out of four people said that it was me. So you know,
20 I had to end up going to court for it and I had an order of
21 protection against these people that I never even met.
22 However, the case was thrown out.

23 THE COURT: How long were you in court?

24 PROSPECTIVE JUROR #13: Maybe I was locked up for
25 about four days.

1 THE COURT: You were locked up four days. But
2 how long did the case go on?

3 PROSPECTIVE JUROR #13: The case only lasted
4 maybe one day.

5 THE COURT: After you got out?

6 PROSPECTIVE JUROR #13: Yeah. Yeah.

7 THE COURT: Did you retain a lawyer or was one
8 provided for you?

9 PROSPECTIVE JUROR #13: I was actually provided
10 with a Legal Aid.

11 THE COURT: Do you think, do you have any opinion
12 as to whether you were treated unfairly or fairly by the
13 system?

14 PROSPECTIVE JUROR #13: At the time the situation
15 happened, I was around 18 years old. I mean, I really,
16 it's really hard for me to say whether I was treated fairly
17 or unfairly.

18 THE COURT: How do you feel about it now? That's
19 what I'm asking.

20 PROSPECTIVE JUROR #13: Right now at this point
21 in time I realize things happen, mistaken identity happens
22 a lot, so it really doesn't bother me.

23 THE COURT: Would that circumstances, those
24 instances, would they creep into any decision you might
25 make here?

1 PROSPECTIVE JUROR #13: No.

2 THE COURT: Okay.

3 Miss Gregory?

4 MS. GREGORY: I don't have any questions, your
5 Honor.

6 THE COURT: Mr. Rodriguez?

7 MR. RODRIGUEZ: I have no questions.

8 THE COURT: Step outside, sir. We'll have you
9 back in a moment. Thank you.

10 (Whereupon, Prospective Juror #13 exited the
11 courtroom.)

12 THE COURT: I need Mr. Leighton. He's number
13 four, Leighton.

14 (Whereupon, Prospective Juror #4 entered the
15 courtroom.)

16 THE COURT: Just have a seat right there, sir.
17 Your name again?

18 PROSPECTIVE JUROR #4: James Leighton.

19 THE COURT: I have someone having been the victim
20 of a crime?

21 PROSPECTIVE JUROR #4: Yes.

22 THE COURT: Who was that now?

23 PROSPECTIVE JUROR #4: My mother was raped in
24 2000.

25 THE COURT: Did that occur here in Kings County

1 or someplace else?

2 PROSPECTIVE JUROR #4: No. That was, I believe
3 in Nassau County.

4 THE COURT: Anyone arrested in connection with
5 that?

6 PROSPECTIVE JUROR #4: No.

7 THE COURT: The case is still open, as far as you
8 know?

9 PROSPECTIVE JUROR #4: Yeah.

10 THE COURT: Any opinion as to whether she was
11 treated fairly or unfairly? The police were called, right?

12 PROSPECTIVE JUROR #4: Yes.

13 THE COURT: And an investigation was undertaken?

14 PROSPECTIVE JUROR #4: Yes.

15 THE COURT: Any impressions as to whether she was
16 treated fairly or unfairly by the system?

17 PROSPECTIVE JUROR #4: There was never a
18 conclusion to it, so I don't know. I wasn't there during
19 the investigation.

20 THE COURT: Well, let me ask you this: Do you
21 think as a result of this experience your mother had, would
22 that in any way affect any decision you might make here in
23 this case?

24 PROSPECTIVE JUROR #4: I don't think I would be
25 completely objective to it.

1 THE COURT: Counsel, either side want to go any
2 further with this?

3 MS. GREGORY: No.

4 MR. RODRIGUEZ: No.

5 THE COURT: Do I have your consents?

6 MS. GREGORY: Yes.

7 MR. RODRIGUEZ: Yes.

8 THE COURT: Thank you very much, sir. Return
9 downstairs to Central Jury.

10 (Whereupon, Prospective Juror #4 exited the
11 courtroom.)

12 THE COURT: I need Miss Layne.

13 THE COURT: Your name again, please.

14 PROSPECTIVE JUROR #3: Carmen Layne.

15 THE COURT: Miss Layne, you indicated that, I
16 guess in during the course of your work as a nurse, you
17 have been involved with victims of rape?

18 PROSPECTIVE JUROR #3: Yes. I had one case way
19 back that a lady was raped. I don't know if it was a
20 husband or a boyfriend, I don't remember.

21 THE COURT: How long ago was this?

22 PROSPECTIVE JUROR #3: A little while.

23 THE COURT: Was she beaten up or what?

24 PROSPECTIVE JUROR #3: She wasn't beaten up. I
25 think it was her husband or boyfriend. He raped her and

1 then put his hand inside her. And she had such a bad
2 infection, I think she wound up with a hysterectomy,
3 because the tears was so severe.

4 THE COURT: Do you think that circumstance would
5 affect your ability to sit on this case involving the
6 allegations of rape?

7 PROSPECTIVE JUROR #3: I don't know. Because I
8 look at the victim, not the case. We're just treating a
9 person.

10 THE COURT: Do you have some doubts about it?
11 We're not sitting in judgment. We just need to know.

12 PROSPECTIVE JUROR #3: Yeah. Because when I see
13 the person, you know --

14 THE COURT: So you think if you might see the
15 person, the victim here, you might have some problems, is
16 that what you're saying?

17 PROSPECTIVE JUROR #3: Yeah.

18 THE COURT: Okay.

19 Counsel, does either side wish to pursue this any
20 further?

21 MS. GREGORY: No, your Honor.

22 MR. RODRIGUEZ: No.

23 THE COURT: Do I have your consents?

24 MS. GREGORY: Yes.

25 MR. RODRIGUEZ: Yes, your Honor.

1 THE COURT: Ma'am, thank you very much.

2 By the way, you have not discussed that with
3 anybody over lunch?

4 PROSPECTIVE JUROR #3: No.

5 THE COURT: You need not do so. Go back
6 downstairs to Central Jury, the large room you came from
7 this morning, Central Jury.

8 (Whereupon, Prospective Juror #3 exited the
9 courtroom.)

10 THE COURT: Mr. Reilly please. He's number two.

11 (Whereupon, Prospective Juror #2 entered the
12 courtroom.)

13 THE COURT: Your name again, sir?

14 PROSPECTIVE JUROR #2: Leo Reilly.

15 THE COURT: Mr. Reilly, I believe someone had
16 been the victim of a crime or accused of a crime. Which
17 one was it?

18 PROSPECTIVE JUROR #2: It was both.

19 THE COURT: Let's start with the victim of a
20 crime. Who was that?

21 PROSPECTIVE JUROR #2: Yes, myself. I was
22 mugged. I can't remember how long ago. It was in the
23 nineties, mid-nineties. But it wasn't anything. They got a
24 hundred dollars from me, pushed me to the ground.

25 THE COURT: Did you call the police?

Voir Dire

140

1 PROSPECTIVE JUROR #2: Yes, I did.

2 THE COURT: Any arrests made?

3 PROSPECTIVE JUROR #2: Not that I was made aware
4 of, no.

5 THE COURT: What about accused, accusations, who
6 was accused?

7 PROSPECTIVE JUROR #2: I was accused.

8 THE COURT: Of what?

9 PROSPECTIVE JUROR #2: I was accused of rape.

10 THE COURT: How long ago was that?

11 PROSPECTIVE JUROR #2: That was '98.

12 THE COURT: Was that here in Kings County or
13 someplace else?

14 PROSPECTIVE JUROR #2: Here, Kings County.

15 THE COURT: Were you arrested?

16 PROSPECTIVE JUROR #2: Yes.

17 THE COURT: Did you spend any time in jail
18 initially?

19 PROSPECTIVE JUROR #2: Initially, no. I'm sorry,
20 a thousand dollars bail. My brother and I were charged
21 as --

22 THE COURT: Codefendants.

23 PROSPECTIVE JUROR #2: -- defendants. My brother
24 was released on his own recognizance. I was held in a
25 thousand dollars bail because it was alcohol related and I

1 had an alcohol related offense prior to that, a DWI.

2 THE COURT: How long before the case was
3 resolved?

4 PROSPECTIVE JUROR #2: Third time in court.

5 THE COURT: Third time?

6 PROSPECTIVE JUROR #2: Yes.

7 THE COURT: It was dismissed?

8 PROSPECTIVE JUROR #2: Yes.

9 THE COURT: Anything about that experience that
10 would affect your ability to sit on this kind of case?

11 PROSPECTIVE JUROR #2: I don't believe so. I
12 believe that it was the system operated the way it should.
13 I was innocent of that crime, and I believe that they knew
14 that, they were fully aware of that. And so it didn't -- I
15 believe that the system worked.

16 THE COURT: Well, do I have your assurance that
17 if selected to sit on this case, you will not allow that
18 circumstance in any way to affect your ability to be fair
19 and impartial?

20 PROSPECTIVE JUROR #2: No, no.

21 THE COURT: You will not allow it to affect your
22 ability to be fair?

23 PROSPECTIVE JUROR #2: I believe, I believe I can
24 be very fair about it.

25 THE COURT: Miss Gregory, any questions?

1 MS. GREGORY: I just -- Mr. Reilly, the person
2 that accused you and your brother, was that someone who was
3 a stranger or someone that you both knew?

4 PROSPECTIVE JUROR #2: She was a stranger. We
5 didn't know her that well.

6 MS. GREGORY: You said you didn't know her that
7 well?

8 PROSPECTIVE JUROR #2: Well, we knew her. When
9 you say "stranger" -- a few times.

10 MS. GREGORY: All right. Thank you.

11 I don't have any other questions.

12 THE COURT: Mr. Rodriguez?

13 MR. RODRIGUEZ: No, I have no questions.

14 THE COURT: Step outside, sir. We'll have you
15 back in a moment.

16 PROSPECTIVE JUROR #2: Okay.

17 (Whereupon, Prospective Juror #2 exited the
18 courtroom.)

19 THE COURT: I believe that's everybody who
20 indicated they wanted to talk to us. Is that correct?

21 MS. GREGORY: Yes.

22 THE COURT: It's not likely, counsel, we're going
23 beyond 5 o'clock. So this will probably be the last round.

24 Let's get those jurors in.

25 (Whereupon, the prospective jurors entered the

1 courtroom.)

2 THE COURT: Miss Sklyar, just remain where you
3 are. Actually, you can return downstairs to Central Jury.
4 Go back downstairs to the large room you came from this
5 morning.

6 PROSPECTIVE JUROR #12: Thank you.

7 THE COURT: Thank the lawyers, ma'am.

8 PROSPECTIVE JUROR #12: Thank you.

9 First floor?

10 COURT OFFICER: Second floor.

11 THE COURT: Miss Gregory.

12 MS. GREGORY: Thank you, your Honor.

13 Good afternoon, ladies and gentlemen.

14 I'm going to ask you some of the same questions
15 that I asked of the group that was before you. And if
16 there's anything that was raised in the group prior to you
17 that you feel you had something that you'd like to say
18 about that, you can pick this time to do that as well.

19 As I said to the other group, we're just trying
20 to find fair and impartial jurors that can sit and listen
21 to this case and reach a decision in the end.

22 Miss Wilson, good afternoon. How are you? We
23 had spoke about, the Judge had explained that our law here
24 is that if you believe one witness and you believe that
25 witness beyond a reasonable doubt, that you, the law says

1 that you can base your decision on that.

2 Now, is there anything in your own personal
3 experience or your religion or anything like that that
4 would, that you personally would require more than that?

5 PROSPECTIVE JUROR #1: No. I feel I can be
6 objective.

7 MS. GREGORY: So if the evidence was credible to
8 you and you only heard from one person but you found it
9 believable, that would be enough?

10 PROSPECTIVE JUROR #1: Yes, I will.

11 MS. GREGORY: Is there anybody here that
12 notwithstanding that rule of law, would still think "I need
13 more than just the one witness"? Anybody that feels that
14 way?

15 Mr. Reilly?

16 PROSPECTIVE JUROR #2: No.

17 MS. GREGORY: You're Okay with that?

18 PROSPECTIVE JUROR #2: Yes.

19 MS. GREGORY: And everyone else? Great. Thank
20 you.

21 Miss Logan, how are you?

22 PROSPECTIVE JUROR #8: Fine.

23 MS. GREGORY: Have you heard of DNA being used to
24 solve cases?

25 PROSPECTIVE JUROR #8: (Shakes head up and down.)

1 MS. GREGORY: And when you talk about DNA, it's
2 talking about science.

3 MR. RODRIGUEZ: Your Honor, I'm objecting.

4 THE COURT: Overruled. Overruled.

5 MS. GREGORY: If you're picked to be a juror in
6 this case, there will be some DNA evidence. And to some
7 people that seems scary, science and languages, and a
8 certain way of using the English language that we're not
9 all that familiar with.

10 If you're chosen as a juror in this case, would
11 you be able to listen to that evidence?

12 PROSPECTIVE JUROR #8: Yes.

13 MS. GREGORY: Would you keep an open mind, all of
14 you, if you were chosen and listen to the witness that was
15 to testify about this DNA evidence and not just turn it off
16 because it must be too broad and above your head?

17 Miss James, how are you?

18 PROSPECTIVE JUROR #10: Fine, thanks.

19 MS. GREGORY: I had talked with the other group
20 about people reacting to stress or a violent sort of
21 situation. Would you agree that people, not all people
22 react similarly?

23 PROSPECTIVE JUROR #10: Yes.

24 MS. GREGORY: And if a person didn't react in the
25 same manner that you think that you might have, would you

1 discredit what they had to say?

2 PROSPECTIVE JUROR #10: No.

3 MS. GREGORY: Mr. Tandy, good afternoon.

4 PROSPECTIVE JUROR #11: Good afternoon.

5 MS. GREGORY: I'm going to raise the issue with
6 you -- if you recall, the incident in this case happened in
7 2002. And obviously that was some years ago. Would you
8 expect that a person, whether they were talking about
9 something very serious or maybe not so serious, would you
10 expect that they would use the exact same words to describe
11 it as they described it three years ago?

12 PROSPECTIVE JUROR #11: I think it's very
13 possible that it could vary.

14 MS. GREGORY: And if it did vary in some points,
15 let's say, but not totally, if it did vary, would that
16 variance alone make you find it not believable?

17 MR. RODRIGUEZ: Objection, your Honor.

18 THE COURT: Well, it depends on what the
19 discrepancy is. I mean, for the moment, if you hear one
20 account and there are discrepancies, ultimately you can use
21 that in determining whether you believe the person is
22 telling the truth or not.

23 PROSPECTIVE JUROR #11: Yes.

24 THE COURT: But it just depends on ultimately
25 your assessment.

1 PROSPECTIVE JUROR #11: Right.

2 THE COURT: Can you do that?

3 PROSPECTIVE JUROR #11: Yes.

4 MS. GREGORY: Is there anybody in the group that
5 sits here that wouldn't agree with Mr. Tandy and would say
6 no?

7 THE COURT: I'm sorry. What I mean is this: In
8 the first instance, you can't just simply say "I'm not
9 going to listen." You've got to listen to the entire
10 circumstance, take in any discrepancies and ultimately come
11 to a conclusion. You just can't turn your mind off and say
12 "I'm not going to listen." That's what she's really
13 saying.

14 Please proceed.

15 MS. GREGORY: Mr. Jensen, how are you?

16 PROSPECTIVE JUROR #5: Okay.

17 MS. GREGORY: We talked about the fact that when
18 the witnesses come in, regardless of who the witness is,
19 whether it's the complaining witness, the victim, or the
20 other witnesses that will testify, that what they're saying
21 in response to the question, that that's evidence.

22 PROSPECTIVE JUROR #5: Right.

23 MS. GREGORY: And if you find that evidence, that
24 testimony that they give, credible, then you can believe
25 it.

1 PROSPECTIVE JUROR #5: Yeah.

2 MS. GREGORY: So you understand that what the
3 words that the people are speaking in response to the
4 question, that that is evidence?

5 PROSPECTIVE JUROR #5: Yes.

6 MS. GREGORY: What about you, Mr. John, do you
7 understand that?

8 PROSPECTIVE JUROR #6: Yes.

9 MS. GREGORY: And let me stick with you for a
10 little bit. Mr. Rodriguez, the defense counsel, was
11 talking about sympathy and how that might play into your
12 decision if you're selected as a juror in this case.

13 Could you assure us that if you were selected as
14 a juror in this case, that sympathy for the complainant in
15 this case or for the defendant in this case wouldn't weigh
16 into your decision?

17 PROSPECTIVE JUROR #6: Yes.

18 MS. GREGORY: I'm not saying that you might not
19 feel sympathy for either of them, but I'm saying you
20 wouldn't let that play into the decision that you would
21 have to make in the end?

22 PROSPECTIVE JUROR #6: No.

23 MS. GREGORY: Miss Thomas, how are you?

24 PROSPECTIVE JUROR #14: I'm Okay.

25 MS. GREGORY: Is there anything that you heard

1 about this case since you've been here and listening to the
2 responses of other people that, you know, has raised any
3 issues for you that you feel this isn't the case for you?

4 PROSPECTIVE JUROR #14: No.

5 MS. GREGORY: So you think if you're chosen,
6 you'll be --

7 PROSPECTIVE JUROR #14: I'll listen.

8 MS. GREGORY: You'll listen to the evidence that
9 was presented. And if you found it to be credible beyond a
10 reasonable doubt, would you be able to find the defendant
11 guilty at that point?

12 PROSPECTIVE JUROR #14: Yes.

13 MS. GREGORY: Is there anybody here who couldn't
14 do that?

15 And Mr. Wright, the same question to you: Do you
16 think if you were chosen as a juror in this case and you
17 heard all the evidence and all the testimony is in and you
18 find it to be credible, would you be able to find the
19 defendant guilty?

20 PROSPECTIVE JUROR 13: Yes.

21 MS. GREGORY: Okay. Thank you, sir.

22 Thank you.

23 THE COURT: Mr. Rodriguez.

24 MR. RODRIGUEZ: Thank you, Judge.

25 Good afternoon.

1 I'm not going to belabor you with my version of
2 the voir dire. I'm going to ask some simple questions.

3 How are you doing today?

4 PROSPECTIVE JUROR #8: Okay.

5 MR. RODRIGUEZ: She asked you, the prosecutor
6 asked you about DNA.

7 You're not going to have a problem being able to
8 listen to it, correct?

9 PROSPECTIVE JUROR #8: No.

10 MR. RODRIGUEZ: Now, you may find that DNA
11 testimony or testimony by experts, is very technical, very
12 lengthy. Will everybody here be able to listen to it?
13 Anybody feel that "oh, man, I don't want to hear this"? It
14 may be late in the day or very early in the morning.
15 Anyone feel -- because the real question I'm asking is
16 before you make your decision about the case, whoever takes
17 the stand, you need to make a decision based on all of the
18 evidence, and not make the decision early in the case. You
19 need to hear everything.

20 Can you promise me that you will weigh
21 everything?

22 PROSPECTIVE JUROR #13: Yes.

23 MR. RODRIGUEZ: Can you do that? For example,
24 she may ask questions, the prosecutor just stated testimony
25 is evidence, believable testimony, the question and the

1 answer, right. She said that. And you agree that would be
2 it, right?

3 What about cross-examination, though?

4 Cross-examination is testimony. And then there's an answer
5 or something is refuted. Would you take that into
6 consideration?

7 THE COURT: Let me just say this: There's no
8 obligation for the defense to do anything. But it's the
9 question, coupled with the answer, that constitutes the
10 evidence, whether asked by the People or the defense.

11 Okay.

12 MR. RODRIGUEZ: So it's not just -- if I choose
13 to cross-examine someone and their answers are their
14 discrepancies, you may consider that as well. Would you
15 agree with that?

16 PROSPECTIVE JUROR #6: Yes.

17 MR. RODRIGUEZ: Now, Mr. Tandy, I noticed that
18 when asked by counsel about recall, and I know the Judge
19 cleared this up, but I want to make sure, that the mere
20 fact that someone, the mere fact that there's a time lapse
21 between when something happens and when someone testifies,
22 if there's a discrepancy in between what she said then and
23 what she's saying now, I want to know that you would
24 consider that when considering whether she's credible or
25 not?

1 PROSPECTIVE JUROR #11: I'd carefully consider
2 everything everybody says in all respects. So I'm not sure
3 what you're asking. I'm going to listen to the testimony
4 and decide.

5 MR. RODRIGUEZ: How do you feel about that?

6 PROSPECTIVE JUROR #10: I feel that everybody has
7 to be considered and taken into consideration.

8 MR. RODRIGUEZ: You were an intern for the
9 district attorney's office?

10 PROSPECTIVE JUROR #10: Yes, I was.

11 MR. RODRIGUEZ: What bureau were you in?

12 PROSPECTIVE JUROR #10: The red zone.

13 MR. RODRIGUEZ: Red zone. What kind of cases
14 were they?

15 PROSPECTIVE JUROR #10: Misdemeanor cases.

16 MR. RODRIGUEZ: Misdemeanor cases.

17 THE COURT: By the way, do you know Miss Gregory?

18 PROSPECTIVE JUROR #10: No, I don't.

19 THE COURT: Was she there when you were there,
20 ma'am?

21 PROSPECTIVE JUROR #10: I don't know. I never
22 saw her.

23 MR. RODRIGUEZ: Any sex cases in the
24 misdemeanors?

25 PROSPECTIVE JUROR #10: No.

Voir Dire

153

1 MR. RODRIGUEZ: You're an attorney, right?

2 PROSPECTIVE JUROR #10: Yes.

3 MR. RODRIGUEZ: You've had training in law?

4 PROSPECTIVE JUROR #10: Yes.

5 MR. RODRIGUEZ: You probably know more law than
6 the entire jury. If you're on the panel, if you're
7 selected -- more than everyone put together -- could you
8 promise not to use your knowledge as an attorney -- not
9 your knowledge that everyone possesses, common sense,
10 obviously, but use it to persuade everyone in the jury to
11 follow your way of seeing things?

12 PROSPECTIVE JUROR #10: Yes.

13 THE COURT: Wait a minute. Wait a minute.

14 In terms of the law, you must accept it as I give
15 it.

16 Factually, you can use your own common sense and
17 life experiences to decide that.

18 You can do that, right?

19 PROSPECTIVE JUROR #10: Yes.

20 THE COURT: But in terms of the law, it's as I
21 give it.

22 MR. RODRIGUEZ: And you promise that if you were
23 selected, that's what you would do?

24 PROSPECTIVE JUROR #10: Yes.

25 MR. RODRIGUEZ: You would be fair to Mr. Fuentes,

1 Jose?

2 PROSPECTIVE JUROR #10: Yes.

3 MR. RODRIGUEZ: Now, this is a serious, violent
4 crime, rape charge, very violent.

5 THE COURT: Indeed it is, counsel.

6 Let me just say this again, as I said initially,
7 any personal considerations a juror might have about the
8 nature of a crime is immaterial here.

9 It's clinical: Was a crime committed. Did the
10 defendant do it.

11 You're not here to pass judgment on the defendant
12 or the crime.

13 It's the quality of the evidence.

14 Please proceed.

15 MR. RODRIGUEZ: Okay.

16 In that same vein, now you may find that
17 perhaps -- I'm not saying it's the case, but you may find
18 perhaps you didn't like something that he did. But if it's
19 not a crime, you won't convict him because you don't like
20 who you think he is, right?

21 PROSPECTIVE JUROR #10: I don't understand.

22 MR. RODRIGUEZ: Okay. If they don't prove that
23 he committed a crime, but you find that something he did,
24 perhaps it may have been you didn't morally care for it or
25 like it --

1 THE COURT: Could we come up. Come up.

2 MR. RODRIGUEZ: Sure.

3 (Off-the-record bench conference.)

4 MR. RODRIGUEZ: Can you be fair --

5 PROSPECTIVE JUROR #2: Yes.

6 MR. RODRIGUEZ: -- to my client and be fair to
7 everyone, a fair juror to everyone, including the
8 complaining witness and my client?

9 PROSPECTIVE JUROR #2: Yes.

10 MR. RODRIGUEZ: Can you be fair?

11 PROSPECTIVE JUROR #1: Yes.

12 MR. RODRIGUEZ: Can you look over at him right
13 now -- and he's not guilty of anything, correct?

14 PROSPECTIVE JUROR #1: Yes.

15 MR. RODRIGUEZ: He's not guilty of anything, is
16 he?

17 Do you think he's guilty of anything? Do you?

18 PROSPECTIVE JUROR #8: I don't know.

19 MR. RODRIGUEZ: You don't know. As he sits here
20 right now, has anything been proven against him in your
21 mind?

22 PROSPECTIVE JUROR #8: No.

23 MR. RODRIGUEZ: So as of right now, based on what
24 you've heard, you have no opinion whether he's guilty or
25 not, correct?

1 PROSPECTIVE JUROR #8: No.

2 MR. RODRIGUEZ: You as well, right?

3 PROSPECTIVE JUROR #2: Yes.

4 MR. RODRIGUEZ: How about you, ma'am, do you have
5 an opinion on his guilt or innocence at this point?

6 PROSPECTIVE JUROR #10: No.

7 MR. RODRIGUEZ: Sir?

8 PROSPECTIVE JUROR #11: No opinion.

9 MR. RODRIGUEZ: How are you doing today?

10 PROSPECTIVE JUROR #5: Okay.

11 MR. RODRIGUEZ: Anything about this case that
12 would give you a difficult time in rendering a fair verdict
13 in this case?

14 PROSPECTIVE JUROR #5: No.

15 MR. RODRIGUEZ: Anything about the type of case
16 it is?

17 PROSPECTIVE JUROR #5: No.

18 MR. RODRIGUEZ: How about you?

19 PROSPECTIVE JUROR #6: No.

20 MR. RODRIGUEZ: Some people have children here.
21 How old are your children?

22 PROSPECTIVE JUROR #6: Four-and-a-half, three and
23 nine months.

24 MR. RODRIGUEZ: Any girls?

25 PROSPECTIVE JUROR #6: One.

1 MR. RODRIGUEZ: He's charged with rape of a
2 woman. The fact that you have a daughter, does that affect
3 your ability to be fair toward him?

4 PROSPECTIVE JUROR #6: No.

5 MR. RODRIGUEZ: Anybody else have children?

6 PROSPECTIVE JUROR #14: I do.

7 MR. RODRIGUEZ: How old?

8 PROSPECTIVE JUROR #14: She's 19.

9 MR. RODRIGUEZ: About the same age as the young
10 lady. Can you be fair despite the fact that you may see a
11 young lady up here who may remind you of your daughter?
12 Can you be fair to my client?

13 PROSPECTIVE JUROR #14: Definitely.

14 MR. RODRIGUEZ: You can be?

15 PROSPECTIVE JUROR #14: Yes.

16 MR. RODRIGUEZ: You promise that you will be if
17 you're chosen as a juror?

18 PROSPECTIVE JUROR #14: Yes.

19 MR. RODRIGUEZ: Can you be, sir?

20 PROSPECTIVE JUROR #13: Yes.

21 MR. RODRIGUEZ: Who else had children?
22 Your children's ages?

23 PROSPECTIVE JUROR #11: Twenty-five and 15.

24 MR. RODRIGUEZ: Fifteen years old is close.

25 Twenty-five at one point was 20 years old. Would that

1 affect, especially two daughters, that affect your ability
2 to be fair to my client in any form or fashion?

3 PROSPECTIVE JUROR #11: Not that I can think of.

4 MR. RODRIGUEZ: Anything you could think of that
5 would make you feel unfair?

6 PROSPECTIVE JUROR #11: No.

7 MR. RODRIGUEZ: No?

8 PROSPECTIVE JUROR #11: No.

9 MR. RODRIGUEZ: Thank you all.

10 THE COURT: Ladies and gentlemen, step outside.
11 We'll have you back in a moment.

12 (Whereupon, the prospective jurors exited the
13 courtroom.)

14 THE COURT: So the record is clear, during the
15 course of the voir dire, the first one as well as this one,
16 I asked counsel to come up to the bench one time in the
17 back.

18 And Mr. Fuentes, you're in agreement with that,
19 is that correct? You know what was going on?

20 THE DEFENDANT: Yes.

21 THE COURT: The last instance was your counsel I
22 thought was trying to suggest to the jury that if they
23 heard something about somebody's personal history and they
24 didn't like it, would they hold it against him. Now, to me
25 that implied that perhaps you might be testifying. But he

1 can't commit to that. So that's why I asked him to
2 rephrase his question to Miss James.

3 You understand what I'm saying?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. But in any event you had
6 signed the Antommarchi waiver, but I want you to be sure of
7 what went on. Okay?

8 THE DEFENDANT: I respect that. Thank you, your
9 Honor.

10 THE COURT: So when you guys get ready, let me
11 know.

12 (Brief pause in proceedings, after which the
13 matter continued as follows:)

14 THE COURT: Both sides ready?

15 MS. GREGORY: Yes.

16 THE COURT: Mr. LaRose, they appear to be ready.
17 Read the names out of the remaining jurors we
18 have on the board.

19 THE CLERK: We have juror one, Wilson; two,
20 Reilly; five, Jensen; six, John; eight, Logan; ten, James;
21 eleven, Tandy; 13, Wright; and 14, Thomas.

22 THE COURT: Everybody clear about that, both
23 sides?

24 MR. RODRIGUEZ: Yes.

25 MS. GREGORY: Yes.

1 THE CLERK: Entire panel for cause, People?

2 MS. GREGORY: Your Honor, I believe defense
3 counsel and I have an issue with number eight.

4 THE COURT: Miss Logan?

5 MR. RODRIGUEZ: Yes.

6 THE COURT: If it's on consent, that's fine.

7 MR. RODRIGUEZ: It's on consent.

8 MS. GREGORY: Nothing else.

9 THE COURT: Defense for cause?

10 MR. RODRIGUEZ: Yes. My concern is with Mr.
11 Jensen. And perhaps --

12 THE COURT: I'm listening.

13 MR. RODRIGUEZ: The reason is he was mugged at
14 knifepoint. And to this point we haven't really discussed
15 the circumstances of this case. I don't believe anyone is
16 aware that this is an alleged knifepoint rape. And my
17 concern is that the time he becomes made aware of the fact
18 that a knife was used in the course of this rape, that it
19 may affect his ability to be fair in this case.

20 THE COURT: Well, look, the Court voir dired him
21 on it. He was quite frank about it. I mean, if, in fact,
22 you wanted to talk about the use of a knife and whether it
23 had an effect on him, you could have done so. But more
24 importantly, I got from him, I got the impression, it had
25 no effect on him at all. He was able to put that

1 circumstance aside.

2 MR. RODRIGUEZ: I don't disagree with that. But
3 I think he's not aware, or no one is aware at this point
4 that this is a knifepoint rape. The allegation is that
5 this is a knifepoint rape, and I didn't think it was
6 appropriate during voir dire to open up the facts of the
7 case.

8 THE COURT: But he was asked what effect, if any,
9 would his prior experience have on this case, and he said
10 none.

11 MR. RODRIGUEZ: I understand. But at this point
12 he's not aware that a knife is part of the allegation.
13 That's the argument.

14 THE COURT: I understand that. But you have not
15 shown -- Miss Gregory, do you have a position on this?

16 MS. GREGORY: Your Honor, I don't think he said
17 anything that would disqualify him.

18 THE COURT: Nor do I.

19 The Court asked him specifically about whether or
20 not that experience would affect his ability to be fair and
21 he said no, unlike some of the other jurors.

22 That challenge for cause is denied.

23 THE CLERK: Any other challenges for cause,
24 defense?

25 MR. RODRIGUEZ: No.

1 THE CLERK: Peremptorily, People, the entire
2 panel?

3 MS. GREGORY: Number two.

4 THE CLERK: Name, please.

5 MS. GREGORY: Mr. Reilly.

6 THE COURT: Anybody else, ma'am?

7 MS. GREGORY: Number 13, Mr. Wright. And number
8 14, Miss Thomas.

9 THE COURT: That's Thomas, Wright and Reilly.
10 Anybody else?

11 MS. GREGORY: No, your Honor.

12 THE COURT: Okay.

13 Defense?

14 MR. RODRIGUEZ: Yes. Mr. Jensen, that would be
15 number five.

16 THE COURT: Number five, yes, sir.

17 MR. RODRIGUEZ: Mr. Jensen.

18 Number ten, Miss James. Number 11, Mr. Tandy.

19 THE COURT: So far it's Jensen, James and Tandy.
20 Anyone else?

21 MR. RODRIGUEZ: None further.

22 THE CLERK: So Miss Wilson, number one, is
23 acceptable and becomes our third juror, and Morris John,
24 number six, becomes our fourth juror.

25 THE COURT: Get those two people in, please,

1 Wilson and John.

2 THE CLERK: Counsel, I have it People six,
3 defense eight.

4 MS. GREGORY: Right.

5 (Whereupon, the two selected jurors entered the
6 courtroom.)

7 THE COURT: Miss Wilson, Mr. John, both of you
8 have been selected to sit on this case.

9 I'm going to give you some rules that will govern
10 your conduct.

11 After you are sworn with the other jurors, I'll
12 repeat these rules. Please keep them in mind.

13 In a moment you're going to be shown where the
14 jury room is. You're to be in the jury room tomorrow, 12
15 noon.

16 Keep an open mind. Do not form, or express, any
17 opinion as to the guilt or non-guilt of this defendant
18 until you have heard all the evidence, the summations of
19 the lawyers, my instructions on the law, and you've gone
20 into the jury room to begin jury deliberations.

21 Do not discuss this case with anyone, not even
22 your fellow jurors, nor should you allow anyone to talk
23 about this case in your presence.

24 Do not visit any location mentioned.

25 Do not try to investigate any fact on your own.

1 Do not read, watch or listen to any accounts of
2 this case should there be any in the media.

3 And if you have a computer and surf the internet,
4 do not surf the internet trying to get any information
5 about this case or anybody involved in this case.

6 And immediately report any attempts by anyone to
7 try to influence you or a fellow juror about your jury
8 service or this case.

9 And until you're discharged, you may not accept
10 compensation or discuss the acceptance of compensation for
11 supplying information about this case with anyone.

12 With those warnings in mind, have a pleasant
13 evening. He's going to take you to the jury room. Once
14 you familiarize yourself with that, see you tomorrow
15 morning, at 12 noon in the jury room, please.

16 (Whereupon, the selected jurors exited the
17 courtroom.)

18 THE COURT: Let's get the people in the audience
19 in, please.

20 MR. RODRIGUEZ: Your Honor, we're just curious --
21 just a moment. People are coming in.

22 THE COURT: Take them back out.

23 (Prospective jurors exited the courtroom.)

24 THE COURT: Yes, sir?

25 MR. RODRIGUEZ: We were just curious that if

1 there were any additional Rosario as to any of the
2 potential witnesses. For the first time I'm being made
3 aware of the existence of Tammy Little. I'm just curious
4 if there are any notes of any testimony that may have been
5 taken by someone in the district attorney's office, whether
6 she was interviewed by anyone. And if that's the case --

7 THE COURT: Could I do this, could I get these
8 jurors out and then we'll take this after the jurors leave.

9 MR. RODRIGUEZ: Sure.

10 THE COURT: Let's get the jurors in, please.

11 (Whereupon, the prospective jurors entered the
12 courtroom.)

13 THE COURT: If you were in the jury box and your
14 name was not called, please return downstairs to the large
15 room you came from this morning. If you were in the box to
16 my right, return to Central Jury.

17 If you were in the audience, please come in and
18 have a seat. All those in the audience, come in, folks.

19 Those of you in the audience, Mr. LaRose is going
20 to call 14 names. We're not going to proceed with any
21 further voir dire, but those 14 I'll need outside the
22 courtroom tomorrow morning, not 10:01, but I need them
23 there 10 o'clock. Because I want to start promptly at 10
24 o'clock.

25 Everybody understand that?

1 He's going to call 14 names. Those are the 14
2 we're going to try to voir dire tomorrow morning at 10
3 o'clock.

4 Mr. LaRose.

5 THE CLERK: Michelle Ruben.

6 THE COURT: You'll be in seat number one, Miss
7 Ruben.

8 THE CLERK: R-U-B-E-N.

9 Maria Thompson, last name is spelled
10 T-H-O-M-P-S-O-N, you'll be in seat two.

11 Sherry Davis, last name is D-A-V-I-S, you'll be
12 in seat three.

13 Gina Flores, last name is spelled F-L-O-R-E-S,
14 you'll be in seat four.

15 Erline McIntosh, you'll be in seat five. Last
16 name is spelled M-C-I-N-T-O-S-H.

17 Marie Joseph, last name J-O-S-E-P-H. You'll be
18 in seat six.

19 Rebecca Vandesande, you'll be in seat seven. Last
20 name V-A-N-D-E-S-A-N-D-E, you'll be in seat seven.

21 Sandra Cole-McNaught, you'll be in seat eight.
22 Last name spelled C-O-L-E hyphen M-C-N-A-U-G-H-T, seat
23 eight.

24 Maureen Morrison, M-O-R-R-I-S-O-N, you'll be in
25 seat nine.

1 Kathleen Murray, you'll be in seat ten. Last
2 name is spelled M-U-R-R-A-Y.

3 Matthew Zeno, last name is spelled Z-E-N-O,
4 you'll be in seat 11.

5 Awalda Rivera, R-I-V-E-R-A, Miss Rivera, you'll
6 be in seat twelve.

7 Roxanne Pons, you'll be in seat 13. Last name is
8 spelled P-O-N-S.

9 And the first name S-H-W-W-E, last name is
10 S-K-Y-I.

11 How do you pronounce that, ma'am?

12 PROSPECTIVE JUROR #14: Key (ph).

13 THE CLERK: You'll be in seat 14.

14 THE COURT: I'd like to see all of you tomorrow
15 at 10 o'clock.

16 All right. Miss Pons, just remain and we'll
17 speak with you.

18 Anybody else whose name was called -- ma'am, I
19 will speak with you privately, I promise. We will speak
20 with you privately.

21 Ten o'clock tomorrow morning.

22 With the names called specifically, try to get
23 here at 10 o'clock, because I want to start promptly. Have
24 a pleasant day. I'll see you all tomorrow outside.

25 Folks, listen. Listen. Just a minute. You are

1 not excused from jury duty.

2 The 14 names that were called, I'm going to voir
3 dire those people first thing in the morning. If I don't
4 get the jury out of those 14, I'll voir dire you. But I
5 want to make sure at least we have people available to voir
6 dire at 10 o'clock, because I know people have a tendency
7 to come in at 10:15, 10:20.

8 See you all outside tomorrow at 10 o'clock.

9 Have Miss Pons just wait outside, please. I'll
10 speak to Miss Pons.

11 (Whereupon, the prospective jurors exited the
12 courtroom.)

13 THE COURT: Have Miss Pons come in.

14 (Whereupon, Prospective Juror #13 entered the
15 courtroom.)

16 THE COURT: I'm sorry. I say Miss Pons. It was
17 the other juror, must have been Rivera. I apologize,
18 ma'am.

19 PROSPECTIVE JUROR #13: That's Okay. I'll see
20 you tomorrow.

21 (Whereupon, Prospective Juror #13 exited the
22 courtroom.)

23 THE COURT: It's Miss Rivera. I'm sorry, Rivera.
24 I thought it was Pons.

25 While we're waiting on Miss Rivera, let's deal

1 with this issue, counsel, about Rosario.

2 COURT OFFICER: She's off the floor, Judge.

3 THE COURT: Then we'll deal with it in the
4 morning.

5 Mr. Rodriguez?

6 MR. RODRIGUEZ: I just ask if there's any
7 interview Rosario of Tammy Little or any other potential
8 witness, that it be turned over.

9 THE COURT: Two things.

10 One, the statute requires once the jury is
11 selected for them to turn it over.

12 But in the interest of fair play, ma'am, do you
13 have any?

14 MS. GREGORY: There is nothing for Miss Little.

15 THE COURT: Okay. All right. She has nothing,
16 counsel.

17 We're going to try to open up at 10 o'clock.
18 Now, if you want to come here beforehand, please be here.

19 Mr. LaRose will be here at 9:30.

20 MR. RODRIGUEZ: Your Honor, do we intend to open
21 tomorrow?

22 THE COURT: I'm going, I'm trying to get this
23 jury and open, yes, sir.

24 MR. RODRIGUEZ: Okay.

25 MS. GREGORY: We want to open tomorrow?

1 THE COURT: Yeah.

2 MR. RODRIGUEZ: You said Thursday initially.

3 THE COURT: I'm trying -- is there going to be a
4 problem?

5 MS. GREGORY: No, no. I thought you had said
6 Thursday earlier today.

7 THE COURT: What I said was if we try to complete
8 most of your testimony Thursday and Friday. But if you're
9 telling me -- look, I tell you what, I'll be happy to just
10 get a jury selected. If I get a jury selected I'll be
11 elated, and we'll go to Thursday.

12 (Whereupon, the trial of the action was adjourned
13 to Wednesday, October 26, 2005.)
14
15
16
17
18
19
20
21
22
23
24
25

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS : CRIMINAL TERM: PART 37

3 -----x
4 THE PEOPLE OF THE STATE OF NEW YORK

5 -against-
6 JOSE FUENTES,

7 Defendant.

8 -----x
9 Indictment #2465/04

JURY TRIAL
320 Jay Street
October 26, 2005

10 B e f o r e :

11 HONORABLE PLUMMER E. LOTT,
12 Justice, and a jury.

13 (Appearances same as previously noted.)

14 KENNETH LETTS
15 OFFICIAL COURT REPORTER

16 -----
17 (Case on trial continued pursuant to adjournment.
18 Appearances same as heretofore noted. No jurors present.)

19 THE COURT: Are we ready to proceed?

20 MR. RODRIGUEZ: Yes, your Honor.

21 MS. GREGORY: Yes, your Honor.

22 THE COURT: All right.

23 If we can, let's get the jurors in, those in the
24 box in first.

25 Those whose names were called, bring them right
in the box.

(Whereupon, the prospective jurors entered the
courtroom.)

THE COURT: Good morning, folks.

I made some comments yesterday about rules that

1 apply to all criminal cases.

2 The bottom line is this: Is there any juror who
3 feels, any prospective juror who feels that he or she can't
4 follow the law? Anybody who feels they can't do that?

5 I've introduced to you the attorneys and the
6 defendant. Any of these people seem familiar to you in a
7 sense that before yesterday you might have seen them
8 outside this courtroom?

9 474 Marcy Avenue, do any of you live, visit or
10 work near that address on a regular basis?

11 Miss Rivera.

12 And Mr. Zeno, is that correct?

13 PROSPECTIVE JUROR #11: Yes.

14 THE COURT: Which is it? Do you live --

15 PROSPECTIVE JUROR #11: I live in Bed-Stuy, so I
16 know the neighborhood.

17 THE COURT: Any opinion about the neighborhood
18 that would affect your ability to be fair and impartial?

19 PROSPECTIVE JUROR #11: The only thing is since I
20 know a lot of people in the neighborhood, that might affect
21 me. I have friends, friends of friends. I'm there a lot.

22 So the only thing I can say about that is that I
23 may have an opinion because of that. It's hard to say.

24 THE COURT: The rule is you're supposed to base
25 your decision solely on the evidence and not any opinion

1 about the area.

2 Let me ask you this: Because you do have friends
3 in the area, do you think that would affect your ability
4 just to sit on the case?

5 PROSPECTIVE JUROR #11: Yes. Because my
6 neighborhood, I don't feel comfortable. I live there.

7 THE COURT: Counsel, do I have your consents?

8 MS. GREGORY: Yes.

9 MR. RODRIGUEZ: Yes, your Honor.

10 THE COURT: Return to Central Jury, sir.

11 (Whereupon, Prospective Juror #11 exited the
12 courtroom.)

13 THE COURT: Miss Rivera, you're familiar with
14 that address?

15 PROSPECTIVE JUROR #12: Yes. I got friends that
16 live there.

17 THE COURT: And I assume you would have a problem
18 sitting as a result of friends you have in the area?

19 PROSPECTIVE JUROR #12: Yeah.

20 THE COURT: She's shaking her head.

21 Counsel, either side wish to pursue this any
22 further?

23 MS. GREGORY: No.

24 MR. RODRIGUEZ: No.

25 THE COURT: Do I have your consents?

1 MS. GREGORY: Yes, your Honor.

2 MR. RODRIGUEZ: Yes, your Honor.

3 THE COURT: Thank you very much, ma'am. Return
4 to Central Jury downstairs on the second floor.

5 (Whereupon, Prospective Juror #12 exited the
6 courtroom.)

7 THE COURT: Mr. LaRose, I need to fill seats 11
8 and twelve.

9 THE CLERK: Yes, sir.

10 THE CLERK: Wakencia Andre, last name A-N-D-R-E,
11 you will in seat number 11.

12 Kyle Burton, last name is spelled B-U-R-T-O-N,
13 you will be in seat twelve.

14 THE COURT: Miss Andre and Mr. Burton, do either
15 of you recognize the attorneys or the defendant as somebody
16 you may have seen before coming into this courtroom?

17 PROSPECTIVE JUROR #11: No.

18 PROSPECTIVE JUROR #12: No.

19 THE COURT: 474 Marcy Avenue, do you live, work
20 or visit that area?

21 PROSPECTIVE JUROR #12: No.

22 PROSPECTIVE JUROR #11: No.

23 THE COURT: All right.

24 Then to all of you, other than what's been
25 alleged here, do you think you know anything at all about

1 this case?

2 PROSPECTIVE JURORS: No.

3 THE COURT: The names I read yesterday, Gina
4 Colon, Tammy Little, Kevin Fedynak, Nurse Durant from
5 Woodhull Hospital, Nurse Dan McSwiggan, Woodhull Hospital,
6 Steven Litwin, detective, Marie Samples, Don Lewittes,
7 Aubry Weekes, any of those names seem familiar to anyone?

8 And again, Miss Andre and Mr. Burton, can you
9 both follow the law?

10 PROSPECTIVE JUROR #11: Yes.

11 PROSPECTIVE JUROR #12: Yes.

12 THE COURT: If you will, Miss Ruben, please, the
13 questionnaire, ma'am.

14 PROSPECTIVE JUROR #1: Michelle Ruben, 28.

15 THE COURT: Keep your voice up.

16 PROSPECTIVE JUROR #1: Michelle Ruben, 28. East
17 Flatbush.

18 One year of college. Emergency room technician.

19 Single. No kids.

20 No interests or hobbies.

21 No organizations.

22 New York Times.

23 THE COURT: Any friends or relatives in law
24 enforcement, ma'am?

25 PROSPECTIVE JUROR #1: No.

Voir Dire

176

1 Never been convicted of a crime. No members of
2 the family.

3 THE COURT: Any opinion about the criminal
4 justice system which would affect your ability to be fair?

5 PROSPECTIVE JUROR #1: No.

6 THE COURT: Were you ever accused of a crime?

7 PROSPECTIVE JUROR #1: No.

8 THE COURT: Any family member or friend ever
9 accused?

10 PROSPECTIVE JUROR #1: No.

11 THE COURT: Any prior jury service, ma'am?

12 PROSPECTIVE JUROR #1: Never been selected. Was
13 for Civil Court.

14 THE COURT: Is there any reason why you couldn't
15 sit?

16 PROSPECTIVE JUROR #1: No.

17 THE COURT: Thank you.

18 Miss Thompson.

19 PROSPECTIVE JUROR #2: Maria Thompson, 57. Live
20 in East Flatbush.

21 Finished high school. I'm a teacher's assistant.
22 I'm married.

23 THE COURT: Your husband, what does he do, ma'am?

24 PROSPECTIVE JUROR #2: He's retired.

25 THE COURT: Any children?

KL

1 PROSPECTIVE JUROR #2: I have two.

2 THE COURT: Any areas of interest or hobbies
3 you'd care to mention?

4 PROSPECTIVE JUROR #2: I like music, I like
5 gospel.

6 THE COURT: Do you belong to any organizations,
7 other than church?

8 PROSPECTIVE JUROR #2: No.

9 THE COURT: Favorite newspaper?

10 PROSPECTIVE JUROR #2: I don't read too much.

11 THE COURT: How do you get your news then?
12 Through television?

13 PROSPECTIVE JUROR #2: Television.

14 THE COURT: Any friends or family members in law
15 enforcement?

16 PROSPECTIVE JUROR #2: No.

17 THE COURT: Any opinion about the criminal
18 justice system which would affect your ability to be fair?

19 PROSPECTIVE JUROR #2: (Shakes head up and down.)

20 THE COURT: The answer is yes?

21 PROSPECTIVE JUROR #2: Yeah.

22 THE COURT: Okay. We'll take that one privately,
23 ma'am.

24 Miss Davis, if you will, please.

25 PROSPECTIVE JUROR #3: Sherry Davis. I live in

1 the Redhook section of Brooklyn. Oh, I'm 45, sorry.

2 Education, I finished high school. I have
3 business school in banking. My occupation is bookkeeping;
4 I'm a bookkeeper.

5 I'm single. I have children; I have five
6 children.

7 I have interests in music.

8 I don't belong to no organizations.

9 I do read the newspaper, watch TV.

10 THE COURT: Any friends or family in law
11 enforcement?

12 PROSPECTIVE JUROR #3: No.

13 THE COURT: Any opinion about the criminal
14 justice system which would affect your ability to be fair?

15 PROSPECTIVE JUROR #3: No.

16 THE COURT: Were you, a family member or friend
17 ever the victim of a crime?

18 PROSPECTIVE JUROR #3: Family.

19 THE COURT: Are you able to talk about it
20 publicly?

21 PROSPECTIVE JUROR #3: Yeah, sure.

22 THE COURT: What happened? And who was involved?

23 PROSPECTIVE JUROR #3: My nephew was in a drug
24 raid. They charged him.

25 THE COURT: No, no, no. Were you, family member

1 or friend ever mugged?

2 PROSPECTIVE JUROR #3: No.

3 THE COURT: House burglarized?

4 PROSPECTIVE JUROR #3: No.

5 THE COURT: So you have a relative who was
6 accused of something?

7 PROSPECTIVE JUROR #3: Yes.

8 THE COURT: Do you want to discuss that publicly
9 or want to do it privately?

10 PROSPECTIVE JUROR #3: It's Okay.

11 THE COURT: So this was a drug raid?

12 PROSPECTIVE JUROR #3: Yeah.

13 THE COURT: And how long ago are we talking
14 about?

15 PROSPECTIVE JUROR #3: About a year, year-
16 and-a-half ago.

17 THE COURT: Was there an actual arrest?

18 PROSPECTIVE JUROR #3: Yeah, he was arrested.

19 THE COURT: And what happened to the case?

20 PROSPECTIVE JUROR #3: He was acquitted.

21 THE COURT: He went to trial?

22 PROSPECTIVE JUROR #3: No. Never made it to
23 trial.

24 THE COURT: What, did they dismiss the case
25 against him or what?

Voir Dire

180

1 PROSPECTIVE JUROR #3: Yes.

2 THE COURT: Any opinion as to whether he was
3 treated fairly or unfairly?

4 PROSPECTIVE JUROR #3: I think he was treated
5 fair.

6 THE COURT: Do you think that circumstance would
7 in any way affect your ability to sit on this case, ma'am?

8 PROSPECTIVE JUROR #3: No.

9 THE COURT: Were you ever on a jury before?

10 PROSPECTIVE JUROR #3: I was going to sit on a
11 civil case, but in the midst of it I was going for a
12 promotion so they excused me.

13 THE COURT: And they excused you?

14 PROSPECTIVE JUROR #3: Yes.

15 THE COURT: Is there any reason why you couldn't
16 sit on this case?

17 PROSPECTIVE JUROR #3: No.

18 THE COURT: Thank you very much.

19 Miss Flores, if you will, please.

20 PROSPECTIVE JUROR #4: Gina Flores. I'm 28. I
21 live in Williamsburg.

22 I'm a senior in college. I do technical support.

23 I'm single. I have one child, and he's less than
24 18.

25 No hobbies, no organizations.

KL

1 The Daily News.

2 THE COURT: Any friends or relatives in law
3 enforcement?

4 PROSPECTIVE JUROR #4: No.

5 THE COURT: Any opinion about the criminal
6 justice system which would affect your ability to be fair?

7 PROSPECTIVE JUROR #4: No.

8 THE COURT: Were you ever the victim of a crime?

9 PROSPECTIVE JUROR #4: No.

10 THE COURT: Any family member or friend ever the
11 victim of a crime?

12 PROSPECTIVE JUROR #4: No.

13 THE COURT: Ever accused of a crime?

14 PROSPECTIVE JUROR #4: No.

15 THE COURT: As far as you know, any family member
16 or friend ever accused?

17 PROSPECTIVE JUROR #4: No.

18 THE COURT: Any prior jury service, ma'am?

19 PROSPECTIVE JUROR #4: No.

20 THE COURT: First time?

21 PROSPECTIVE JUROR #4: Yes.

22 THE COURT: Any reason you couldn't sit?

23 PROSPECTIVE JUROR #4: No.

24 THE COURT: Thank you.

25 Miss McIntosh.

Voir Dire

182

1 PROSPECTIVE JUROR #5: Eileen McIntosh, 43. East
2 Flatbush.

3 College. A scheduler.

4 I'm married.

5 THE COURT: Your husband, what does he do, ma'am?

6 PROSPECTIVE JUROR #5: Laborer.

7 I have one son, 19.

8 Computer games.

9 No organizations.

10 I don't read the newspaper, I don't watch TV.

11 News, I get it from friends.

12 THE COURT: Any friends or relatives in law
13 enforcement?

14 PROSPECTIVE JUROR #5: No.

15 THE COURT: Any opinion about the criminal
16 justice system which would affect your ability to be fair?

17 PROSPECTIVE JUROR #5: No.

18 THE COURT: Were you ever the victim of a crime?

19 PROSPECTIVE JUROR #5: Yes.

20 THE COURT: Are you able to talk about it?

21 PROSPECTIVE JUROR #5: Auto theft.

22 THE COURT: Did you report that?

23 PROSPECTIVE JUROR #5: Yes.

24 THE COURT: Any arrests made?

25 PROSPECTIVE JUROR #5: No.

Voir Dire

183

1 THE COURT: Do you think that circumstance would
2 affect your ability to be fair?

3 PROSPECTIVE JUROR #5: No, sir.

4 THE COURT: What about a friend or family member
5 having been the victim of a crime?

6 PROSPECTIVE JUROR #5: Yes.

7 THE COURT: Who are we talking about?

8 PROSPECTIVE JUROR #5: I don't want to talk about
9 it.

10 THE COURT: Privately?

11 PROSPECTIVE JUROR #5: Yes.

12 THE COURT: Sure.

13 THE COURT: Ever accused of a crime?

14 PROSPECTIVE JUROR #5: No.

15 THE COURT: As far as you know, any friend or
16 family member ever accused?

17 PROSPECTIVE JUROR #5: Yes.

18 THE COURT: Okay. So accused and victim as well.

19 PROSPECTIVE JUROR #5: Not victim, accused.

20 THE COURT: I see. Okay.

21 Any prior jury service, ma'am?

22 PROSPECTIVE JUROR #5: Yes, but I didn't serve,
23 civil.

24 THE COURT: Okay. Is there any reason why you
25 couldn't sit on this case?

KL

1 PROSPECTIVE JUROR #5: No, sir.

2 THE COURT: Miss Joseph.

3 PROSPECTIVE JUROR #6: Marie Joseph. I live in

4 Canarsie.

5 High school. My occupation is nursing assistant.

6 I'm married.

7 THE COURT: Your husband, what does he do, ma'am?

8 PROSPECTIVE JUROR #6: Baker.

9 THE COURT: Any children?

10 PROSPECTIVE JUROR #6: Yeah, two children.

11 THE COURT: Any areas of interest or hobbies
12 you'd care to mention?

13 PROSPECTIVE JUROR #6: No.

14 THE COURT: Belong to any organizations you'd
15 care to mention?

16 PROSPECTIVE JUROR #6: Church.

17 THE COURT: Favorite newspaper?

18 PROSPECTIVE JUROR #6: Daily News.

19 THE COURT: Any friends or relatives in law
20 enforcement?

21 PROSPECTIVE JUROR #6: No.

22 THE COURT: Any opinion about the criminal
23 justice system which would affect your ability to be fair?

24 PROSPECTIVE JUROR #6: No.

25 THE COURT: Were you, a family member or friend

Voir Dire

185

1 ever the victim of a crime?

2 PROSPECTIVE JUROR #6: No.

3 THE COURT: Ever accused of a crime?

4 PROSPECTIVE JUROR #6: No.

5 THE COURT: What about a family member or friend?

6 PROSPECTIVE JUROR #6: No.

7 THE COURT: Have you ever served on an actual
8 jury or grand jury before?

9 PROSPECTIVE JUROR #6: No.

10 THE COURT: Is there any reason why you could not
11 sit on this case, ma'am?

12 PROSPECTIVE JUROR #6: No.

13 THE COURT: Thank you.

14 Miss Pons.

15 PROSPECTIVE JUROR #13: Roxanne Pons. Park Slope,
16 Brooklyn.

17 Senior in college.

18 I'm not married; single. No children.

19 Interests, science, anything scientific.

20 Hobbies, sports.

21 I don't belong to any organizations.

22 I read Daily News, Times.

23 I have a sister who's a police officer.

24 THE COURT: Do you think that relationship will
25 affect your ability to be fair?

KL

Voir Dire

186

1 PROSPECTIVE JUROR #13: Not at all.

2 THE COURT: Any opinion about the criminal
3 justice system which would affect your ability to be fair?

4 PROSPECTIVE JUROR #13: No.

5 THE COURT: Were you ever the victim of a crime?

6 PROSPECTIVE JUROR #13: Never.

7 THE COURT: As far as you know, any family member
8 or friend ever the victim?

9 PROSPECTIVE JUROR #13: No.

10 THE COURT: Ever accused of a crime?

11 PROSPECTIVE JUROR #13: No.

12 THE COURT: What about a family member or friend?

13 PROSPECTIVE JUROR #13: No.

14 THE COURT: Any prior jury service?

15 PROSPECTIVE JUROR #13: Never.

16 THE COURT: Is there any reason why you couldn't
17 sit?

18 PROSPECTIVE JUROR #13: Not at all.

19 THE COURT: Thank you.

20 Miss Skyi.

21 PROSPECTIVE JUROR #14: Shwwe Skyi. I'm 42. I
22 live in Bensonhurst.

23 THE COURT: Just an area.

24 PROSPECTIVE JUROR #14: Avenue P, Bensonhurst,
25 Brooklyn.

KL

1 Second year college. My occupation is accounting
2 clerk.

3 I'm married, one child.

4 THE COURT: Your husband, what does he do?

5 PROSPECTIVE JUROR #14: A factory worker.

6 THE COURT: Any areas of interest or hobbies?

7 What do you do in your spare time?

8 PROSPECTIVE JUROR #14: Cooking and reading.

9 THE COURT: Belong to any organizations you'd
10 care to mention?

11 PROSPECTIVE JUROR #14: No.

12 THE COURT: Do you have a favorite newspaper?

13 PROSPECTIVE JUROR #14: Chinese Daily News.

14 THE COURT: All right. Any friends or family in
15 law enforcement?

16 PROSPECTIVE JUROR #14: No.

17 THE COURT: Any police officers, correction
18 officers?

19 PROSPECTIVE JUROR #14: No.

20 THE COURT: Lawyers, judges, anything like that?

21 PROSPECTIVE JUROR #14: No.

22 THE COURT: Do you have any opinion about the
23 criminal justice system which would affect your ability to
24 be fair?

25 PROSPECTIVE JUROR #14: No.

1 THE COURT: Were you ever the victim of a crime?
2 House broken into, car stolen, anything like that?

3 PROSPECTIVE JUROR #14: No.

4 THE COURT: What about a family member or friend
5 ever being the victim of a crime?

6 PROSPECTIVE JUROR #14: No.

7 THE COURT: Ever accused of a crime?

8 PROSPECTIVE JUROR #14: (No response.)

9 THE COURT: All right. I'll tell you what, Miss
10 Skyi, for the moment we'll go on to Mr. Burton and come
11 back to you.

12 PROSPECTIVE JUROR #12: Kyle Burton, 32 years of
13 age. Live in Bay Ridge.

14 College. New York City firefighter.

15 I'm married.

16 THE COURT: Your wife, what does she do, sir?

17 PROSPECTIVE JUROR #12: New York City
18 schoolteacher.

19 I have two children.

20 Play football, video games, computer junkie.

21 I belong to the Vulcan Society, black
22 firefighters.

23 I read The Chief.

24 Friends in law enforcement.

25 THE COURT: The people that you know, the bottom

1 line is this: Would you allow those relationships to
2 affect your ability to be fair?

3 PROSPECTIVE JUROR #12: No.

4 THE COURT: Okay. Any opinion about the criminal
5 justice system which would affect your ability to be fair?

6 PROSPECTIVE JUROR #12: No.

7 THE COURT: Were you ever the victim of a crime?

8 PROSPECTIVE JUROR #12: No.

9 THE COURT: As far as you know, any family member
10 or friend ever the victim of a crime?

11 PROSPECTIVE JUROR #12: No.

12 THE COURT: Ever accused of a crime?

13 PROSPECTIVE JUROR #12: No.

14 THE COURT: As far as you know, any family member
15 or friend ever accused?

16 PROSPECTIVE JUROR #12: No.

17 THE COURT: Any prior jury service?

18 PROSPECTIVE JUROR #12: No.

19 THE COURT: Is there any reason why you couldn't
20 sit on this case?

21 PROSPECTIVE JUROR #12: No.

22 THE COURT: Miss Andre, if you will, please,
23 ma'am.

24 PROSPECTIVE JUROR #11: Wakencia Andre, age 25.
25 East Flatbush.

1 High school. CNA.

2 Married.

3 THE COURT: Your husband, what does he do?

4 PROSPECTIVE JUROR #11: He's a parking lot
5 manager.

6 THE COURT: Any children?

7 PROSPECTIVE JUROR #11: Two.

8 THE COURT: Any areas of interests or hobbies
9 you'd care to mention?

10 PROSPECTIVE JUROR #11: No.

11 THE COURT: Any organizations you'd care to
12 mention?

13 PROSPECTIVE JUROR #11: No.

14 THE COURT: Favorite newspaper?

15 PROSPECTIVE JUROR #11: No.

16 THE COURT: You don't have one?

17 PROSPECTIVE JUROR #11: Read it from time to
18 time.

19 THE COURT: Get your news through television or
20 what?

21 PROSPECTIVE JUROR #11: Television.

22 THE COURT: Any friends or relatives in law
23 enforcement, ma'am?

24 PROSPECTIVE JUROR #11: No.

25 THE COURT: Any opinion about the criminal

Voir Dire

191

1 justice system which would affect your ability to be fair?

2 PROSPECTIVE JUROR #11: No.

3 THE COURT: Were you ever the victim of a crime?

4 PROSPECTIVE JUROR #11: No.

5 THE COURT: As far as you know, any family member
6 or friend ever the victim of a crime?

7 PROSPECTIVE JUROR #11: No.

8 THE COURT: Ever accused of a crime?

9 PROSPECTIVE JUROR #11: No.

10 THE COURT: As far as you know, any family member
11 or friend ever accused?

12 PROSPECTIVE JUROR #11: No.

13 THE COURT: Any prior jury service?

14 PROSPECTIVE JUROR #11: No.

15 THE COURT: First time?

16 PROSPECTIVE JUROR #11: Yes.

17 THE COURT: Is there any reason why you couldn't
18 sit?

19 PROSPECTIVE JUROR #11: Yes.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR #11: I have orientation for a
22 job.

23 THE COURT: When?

24 PROSPECTIVE JUROR #11: Thursday and Friday.

25 THE COURT: Okay. So this Thursday and this

1 Friday?

2 PROSPECTIVE JUROR #11: Yes.

3 THE COURT: I see.

4 Counsel, do I have your consents on that?

5 MR. RODRIGUEZ: Yes, your Honor.

6 MS. GREGORY: Yes.

7 THE COURT: Ma'am, look, I can't get you off jury
8 duty. You have to go downstairs. You should tell them
9 downstairs that you have some job concerns. Okay?

10 PROSPECTIVE JUROR #11: Okay.

11 THE COURT: Good luck.

12 (Whereupon, Prospective Juror #11 exited the
13 courtroom.)

14 THE COURT: Kathleen Murray, if you will, ma'am,
15 please.

16 PROSPECTIVE JUROR #10: Kathleen Murray, 24. I
17 live in Clinton Hill.

18 College. I'm a printer.

19 I'm married and my husband's a bartender. No
20 children.

21 I'm an artist.

22 No organizations.

23 I don't read the newspaper. I listen NPR.

24 THE COURT: Any friends or relatives in law
25 enforcement?

1 PROSPECTIVE JUROR #10: No.

2 THE COURT: Any opinion about the criminal
3 justice system which would affect your ability to be fair?

4 PROSPECTIVE JUROR #10: No.

5 THE COURT: Were you ever the victim of a crime?

6 PROSPECTIVE JUROR #10: Yes.

7 THE COURT: Are you able to talk about it
8 publicly?

9 PROSPECTIVE JUROR #10: No.

10 THE COURT: What I'll do is we'll deal with the
11 balance of the questionnaire privately as well.

12 PROSPECTIVE JUROR #10: Okay.

13 THE COURT: Miss Morrison, is that correct?

14 PROSPECTIVE JUROR #9: Yes, sir.

15 Maureen Morrison, age 47. I live in the
16 Flatbush area of Brooklyn.

17 College. I'm a financial counselor.

18 I am married.

19 THE COURT: Your husband, what does he do, ma'am?

20 PROSPECTIVE JUROR #9: He's a colonel in the Air
21 Force and an engineer with The City.

22 I have two children.

23 THE COURT: Any areas of interest or hobbies
24 you'd care to mention?

25 PROSPECTIVE JUROR #9: No.

1 THE COURT: Any organizations?

2 PROSPECTIVE JUROR #9: Organization is the
3 church.

4 No newspaper. I watch the television.

5 THE COURT: Any friends or relatives in law
6 enforcement?

7 PROSPECTIVE JUROR #9: No.

8 THE COURT: Any opinion about the criminal
9 justice system which would affect your ability to be fair?

10 PROSPECTIVE JUROR #9: No.

11 THE COURT: Were you ever the victim of a crime?

12 PROSPECTIVE JUROR #9: No.

13 THE COURT: Any family member or friend ever the
14 victim of a crime?

15 PROSPECTIVE JUROR #9: No.

16 THE COURT: Ever accused of a crime?

17 PROSPECTIVE JUROR #9: No.

18 THE COURT: As far as you know, any family member
19 or friend ever accused?

20 PROSPECTIVE JUROR #9: No.

21 THE COURT: Any prior jury service?

22 PROSPECTIVE JUROR #9: Yes.

23 THE COURT: Criminal or civil?

24 PROSPECTIVE JUROR #9: I think it's civil.

25 THE COURT: How long ago was it?

Voir Dire

195

1 PROSPECTIVE JUROR #9: I served three times. The
2 last time was about six years ago.

3 THE COURT: The last time you served, how many
4 jurors were there, six or were there 12?

5 PROSPECTIVE JUROR #9: Twelve.

6 THE COURT: So that probably was a criminal case.
7 Was it 120 Schermerhorn or 360?

8 PROSPECTIVE JUROR #9: 360.

9 THE COURT: Do you remember what it was about?

10 PROSPECTIVE JUROR #9: They had gone to, did
11 surgery on the woman's eye and she was blind.

12 THE COURT: Well, you wouldn't have had 12 jurors
13 on a civil case. Did the jury deliberate?

14 PROSPECTIVE JUROR #9: No. We actually sat like
15 this, listened to the evidence, but they settled.

16 THE COURT: Okay. It was civil. It was civil.
17 It's unusual for them to have that many jurors, though.

18 PROSPECTIVE JUROR #9: Well, it's six years ago,
19 so I probably can't remember if it was 12.

20 THE COURT: In any event, anything about your
21 service on that case that would affect your ability to sit
22 on this case?

23 PROSPECTIVE JUROR #9: No.

24 THE COURT: Is there any reason why you couldn't
25 sit on this case?

Voir Dire

196

1 PROSPECTIVE JUROR #9: No.

2 THE COURT: Thank you, very much.

3 PROSPECTIVE JUROR #9: You're welcome.

4 THE COURT: Miss Cole-McNaught.

5 PROSPECTIVE JUROR #8: Sandra Cole-McNaught. I'm
6 49 years old. I live in Crown Heights.

7 I have a Ph.D. I'm an educator by occupation.

8 I'm divorced. Three children, ages 28, 21 and
9 12.

10 My hobbies are concerning the arts, particularly
11 interior decorating.

12 I belong to the church, to Greenpeace, to Move
13 On, to the Brooklyn Family for Peace.

14 I read some aspects of the Times on-line. Get my
15 news from BC World News.

16 I have a former student and friend who's a
17 lawyer.

18 THE COURT: Do you think that relationship would
19 affect your ability to be fair?

20 PROSPECTIVE JUROR #8: No.

21 THE COURT: Any opinion about the criminal
22 justice system which would affect your ability to be fair?

23 PROSPECTIVE JUROR #8: No.

24 THE COURT: Ever the victim of a crime?

25 PROSPECTIVE JUROR #8: Yes.

1 THE COURT: Are you able to talk about it
2 publicly?

3 PROSPECTIVE JUROR #8: Yes. Probably about 18
4 years ago I was hit in the head while sitting on the bus.
5 There was no arrest made because the young man who did it,
6 he was on the outside and it was one of those buses with
7 the vertical lift window, so he lift it up and hit me in
8 the head. I suffered a slipped disk and was in severe pain
9 and physical therapy for a while.

10 THE COURT: Did you report that to the police?

11 PROSPECTIVE JUROR #8: I did.

12 THE COURT: Any arrest made?

13 PROSPECTIVE JUROR #8: No. Because he ran away,
14 so I couldn't even identify him. He just ran away.

15 THE COURT: So you sued the Transit Authority?

16 PROSPECTIVE JUROR #8: No.

17 THE COURT: You didn't?

18 PROSPECTIVE JUROR #8: No. I'm not very
19 litigious.

20 THE COURT: You have no residual problems, do
21 you?

22 PROSPECTIVE JUROR #8: No.

23 THE COURT: All right. What about a friend or
24 family member ever having been the victim of a crime?

25 PROSPECTIVE JUROR #8: A friend.

1 THE COURT: Are you able to talk about that
2 publicly?

3 PROSPECTIVE JUROR #8: Yes. Over 30 years ago a
4 friend of mine was raped and murdered. And I was very
5 young, so I can't remember all the particulars and I don't
6 recall if any arrest was ever made.

7 THE COURT: Do you think given what happened 30
8 years ago and it's close in allegations to this case, is it
9 the kind of thing you can sit on, you think?

10 PROSPECTIVE JUROR #8: Yes, I can.

11 THE COURT: So you can separate that circumstance
12 from this?

13 PROSPECTIVE JUROR #8: Absolutely.

14 THE COURT: Good. Ever accused of a crime?

15 PROSPECTIVE JUROR #8: No.

16 THE COURT: As far as you know, any family member
17 or friend ever accused?

18 PROSPECTIVE JUROR #8: A cousin. But the case
19 was dismissed; it was mis mistaken identity.

20 THE COURT: Was that here in Kings County or
21 someplace else?

22 PROSPECTIVE JUROR #8: It was in Kings County.

23 THE COURT: Do you think that circumstance would
24 affect how you might see this case?

25 PROSPECTIVE JUROR #8: No.

1 THE COURT: Any prior jury service?

2 PROSPECTIVE JUROR #8: No.

3 THE COURT: Is there any reason, any reason why
4 you could not sit on this case?

5 PROSPECTIVE JUROR #8: No.

6 THE COURT: And you could be a fair and impartial
7 juror?

8 PROSPECTIVE JUROR #8: Absolutely.

9 THE COURT: Thank you.

10 Miss Vandesande.

11 PROSPECTIVE JUROR #7: Rebecca Vandesande, 38.
12 Live in Brooklyn Heights.

13 I have a master's degree. I'm an architect.

14 I'm married.

15 THE COURT: Your husband, what does he do now?

16 PROSPECTIVE JUROR #7: He's also an architect.

17 THE COURT: Any children?

18 PROSPECTIVE JUROR #7: Two.

19 THE COURT: Areas of interest?

20 PROSPECTIVE JUROR #7: Skiing, art.

21 THE COURT: Do you belong to any organizations,
22 other than professional organizations?

23 PROSPECTIVE JUROR #7: Not other than
24 professional. I read The New York Times.

25 THE COURT: Any friends or relatives in law

1 enforcement?

2 PROSPECTIVE JUROR #7: No.

3 THE COURT: Any opinion about the criminal
4 justice system which would affect your ability to be fair?

5 PROSPECTIVE JUROR #7: No.

6 THE COURT: Were you ever the victim of a crime?

7 PROSPECTIVE JUROR #7: No.

8 THE COURT: Any family member or friend ever the
9 victim?

10 PROSPECTIVE JUROR #7: No.

11 THE COURT: Ever accused of a crime?

12 PROSPECTIVE JUROR #7: No.

13 THE COURT: What about a friend or family member
14 being accused?

15 PROSPECTIVE JUROR #7: No.

16 THE COURT: Any prior jury service, civil or
17 criminal?

18 PROSPECTIVE JUROR #7: I was called, but I never
19 was chosen.

20 THE COURT: Okay. Is there any reason why you
21 could not sit on this case?

22 PROSPECTIVE JUROR #7: I have to pick up my
23 daughter on Thursday at 3:00, so I don't know.

24 THE COURT: Is that the only concern you have?

25 PROSPECTIVE JUROR #7: Yeah.

1 THE COURT: I wouldn't worry about that one, if
2 you're selected.

3 PROSPECTIVE JUROR #7: Okay.

4 THE COURT: With that, I'm going to speak to at
5 least two of you individually. I'm going to ask everybody
6 to step outside and we'll have you back in a moment.

7 (Whereupon, the prospective jurors exited the
8 courtroom.)

9 THE COURT: I need Miss Murray, number ten.

10 (Whereupon, Prospective Juror #10 entered the
11 courtroom.)

12 THE COURT: Miss Murray, why don't you just have
13 a seat in the front row right there, please.

14 PROSPECTIVE JUROR #10: Okay.

15 THE COURT: Now, I made a note and can't even
16 read my handwriting. Did it relate to being the victim
17 of a crime?

18 PROSPECTIVE JUROR #10: Yes.

19 THE COURT: If you will, tell us what it
20 involved?

21 PROSPECTIVE JUROR #10: I just lived in Italy for
22 a while, and I was raped while I was there.

23 THE COURT: You were?

24 PROSPECTIVE JUROR #10: Yes.

25 THE COURT: Was there a prosecution of some sort?

1 PROSPECTIVE JUROR #10: No.

2 THE COURT: Given the nature of the charges here,
3 do you think you could sit on this case?

4 PROSPECTIVE JUROR #10: I do.

5 THE COURT: You do?

6 PROSPECTIVE JUROR #10: Just because my father
7 was also falsely accused of rape, and so I feel I see both
8 sides.

9 THE COURT: Let me ask you this: When you were
10 in Italy, was this somebody you knew or --

11 PROSPECTIVE JUROR #10: No.

12 THE COURT: What happened?

13 PROSPECTIVE JUROR #10: I was walking home one
14 night and I was picked up off the street and taken
15 somewhere and raped and left.

16 THE COURT: Was any kind of weapon used?

17 PROSPECTIVE JUROR #10: A gun.

18 THE COURT: A gun?

19 PROSPECTIVE JUROR #10: Uh-huh.

20 THE COURT: And after the event, were you taken
21 to the hospital?

22 PROSPECTIVE JUROR #10: Uh-hum.

23 THE COURT: And the police conducted an
24 investigation?

25 PROSPECTIVE JUROR #10: (Shakes head up and

1 down.)

2 THE COURT: Did you, as a result of what happened
3 to you, engage in any kind of counseling?

4 PROSPECTIVE JUROR #10: Yes.

5 THE COURT: How long were you involved with the
6 counseling?

7 PROSPECTIVE JUROR #10: A year-and-a-half.

8 THE COURT: Since that time you've not seen a
9 counselor?

10 PROSPECTIVE JUROR #10: No.

11 THE COURT: And now you say your father was
12 accused of rape also?

13 PROSPECTIVE JUROR #10: Yes.

14 THE COURT: How long ago was that?

15 PROSPECTIVE JUROR #10: A year ago.

16 THE COURT: Did that occur here in Kings County?

17 PROSPECTIVE JUROR #10: No. In Virginia.

18 THE COURT: And what were the circumstances? I
19 mean, is this somebody he allegedly knew?

20 PROSPECTIVE JUROR #10: Yeah.

21 THE COURT: Okay. And did he wind up initially
22 spending any time in jail?

23 PROSPECTIVE JUROR #10: No.

24 THE COURT: What happened to the case?

25 PROSPECTIVE JUROR #10: It was dropped.

1 THE COURT: And you're saying that those two
2 circumstances would not have any impact on how you would
3 see this case?

4 PROSPECTIVE JUROR #10: I don't think so, no.

5 THE COURT: Okay. When you say "think," are you
6 saying --

7 PROSPECTIVE JUROR #10: I don't, no.

8 THE COURT: -- as a matter of speech?

9 PROSPECTIVE JUROR #10: As a matter of speech.

10 THE COURT: Have you ever served on a jury before
11 at all?

12 PROSPECTIVE JUROR #10: No.

13 THE COURT: Your first time?

14 PROSPECTIVE JUROR #10: Yeah.

15 THE COURT: Is there any reason why you couldn't
16 sit on this case?

17 PROSPECTIVE JUROR #10: (Shakes head from side to
18 side.)

19 THE COURT: You could be a fair and impartial
20 juror to both sides?

21 PROSPECTIVE JUROR #10: Yes.

22 THE COURT: People, any questions?

23 MS. GREGORY: The incident in Italy, how old were
24 you there?

25 PROSPECTIVE JUROR #10: Twenty. It was four

1 years ago.

2 MS. GREGORY: Thank you.

3 THE COURT: Mr. Rodriguez?

4 MR. RODRIGUEZ: What happened after the rape
5 occurred? What happened immediately after?

6 PROSPECTIVE JUROR #10: I was in the hospital for
7 a couple of days?

8 MR. RODRIGUEZ: In the hospital?

9 PROSPECTIVE JUROR #10: Yes.

10 MR. RODRIGUEZ: Did you approach the police right
11 after the incident?

12 PROSPECTIVE JUROR #10: They came to me.

13 MR. RODRIGUEZ: That's it.

14 THE COURT: You could step outside, ma'am. We'll
15 have you back in a moment.

16 PROSPECTIVE JUROR #10: Thanks.

17 (Whereupon, Prospective Juror #10 exited the
18 courtroom.)

19 THE COURT: Number 14, Miss Skyi. I'm not sure
20 about the language. I'll bring her in if you want, but --

21 MR. RODRIGUEZ: I think at some point you asked
22 her a question, it was obvious she didn't understand your
23 question.

24 MS. GREGORY: Right.

25 THE COURT: So I have your consents on her?

1 MS. GREGORY: Yes.

2 MR. RODRIGUEZ: Yes.

3 MR. RODRIGUEZ: Your Honor, can we address this
4 woman before you -- Okay.

5 (Whereupon, Prospective Juror #14 entered the
6 courtroom.)

7 THE COURT: Miss Skyi, you can return downstairs
8 to Central Jury on the second floor Okay.

9 PROSPECTIVE JUROR #14: Yes.

10 (Whereupon, Prospective Juror #14 exited the
11 courtroom.)

12 THE COURT: Yes, Mr. Rodriguez?

13 MR. RODRIGUEZ: Your Honor, I don't want to
14 belabor the point, but it seems to me, and I heard Miss
15 Murray speak and she said she could be fair in this case,
16 but it seems to me that my client's charged with rape,
17 she's had two very serious traumatic incidents happen in
18 her life, one in which she was in the hospital following a
19 gunpoint rape, and she says she can be fair.

20 I'm not saying -- maybe she believes she can be.
21 But also her father was charged with rape. And I think
22 that given the nature of this case, given the nature of my
23 client's charge, you know, my client will spend, certainly
24 spend a significant amount of time incarcerated should he
25 be convicted of this charge, and I think that this -- and

1 now may not be the appropriate time to make this
2 observation, but I think that Miss Murray because of the
3 nature of her life experiences would not be an appropriate
4 juror for this case.

5 THE COURT: Mr. Rodriguez, I mean, look, while I
6 know it's your job to argue a point, there has to be some
7 basis upon which the Court can act.

8 Now, I ask you, sir, to point to one thing she
9 has said that would indicate that she can't be a fair and
10 impartial juror. That's all I'm saying. If you can show
11 me that and tell me that there's a challenge for cause,
12 I'll hear you. But she told you about the experience, she
13 told you she was in counseling. From all apparent purposes
14 she seemed to be over it and prepared to be a fair and
15 impartial juror.

16 So I'm supposed to go behind that now simply
17 because your client is charged and say because she was a
18 victim, because her father was falsely accused, therefor
19 I'm supposed to kick her off on that basis alone?

20 MR. RODRIGUEZ: Well, initially, your Honor, what
21 she said was she said she thought she could be. Obviously,
22 obviously, your Honor, she changed her mind, she said that
23 wouldn't affect her. But again --

24 THE COURT: No, Mr. Rodriguez, she didn't change
25 her mind. I asked her specifically are you saying it

1 because you're nervous or are you saying it because of
2 uncertainty and she said ultimately just a matter of
3 speech.

4 MR. RODRIGUEZ: I think you suggested to her that
5 it with as a matter of speech. But that's neither here nor
6 there, your Honor. I'm not disagreeing, your Honor.

7 My point is, my point is that during the course
8 of this trial there is going to be serious, going to be
9 discussion about the rape itself, they're going to talk
10 about how the rape occurred, you know, there's allegations
11 of oral sex, allegations of vaginal sex, there's going to
12 be knife point. And I don't say that she doesn't think she
13 can be fair. I'm just stating that the nature of the case,
14 once she starts hearing those types of things, once she
15 starts it, there's no way of telling whether what she says
16 now can be put aside.

17 I don't know, she had counseling for a year-
18 and-a-half, maybe she was fine in a year-and-a-half, but
19 I'd hate to have a situation where this trial starts going
20 on and perhaps she's picked on this jury, you know, and
21 then something comes up because she can't deal with it
22 emotionally.

23 THE COURT: And once again I ask you to point to
24 something that she said that reflects that, that she can't
25 deal with it.

Voir Dire

209

1 MR. RODRIGUEZ: Listen, your Honor, the only
2 thing I'm saying is for purposes of erring on the side of
3 safety and fairness and justice, I'm just saying I don't
4 want to see a situation come up later.

5 THE COURT: Why am I going to kick her off a jury
6 when she represents she's able to handle it in terms of
7 fairness? Come on, please.

8 If that's a challenge for cause at this point,
9 you don't have it.

10 If you want to talk to her during your voir dire
11 and try to develop more, you can do it.

12 MR. RODRIGUEZ: Okay.

13 THE COURT: All right.

14 If you will, Miss Thompson. She's number two.

15 (Whereupon, Prospective Juror #2 entered the
16 courtroom.)

17 THE COURT: Miss Thompson, if you will, give us
18 your first name again, please.

19 PROSPECTIVE JUROR #2: Maria Thompson.

20 THE COURT: You indicated you had an opinion
21 about the criminal justice system which would affect your
22 ability to be fair?

23 PROSPECTIVE JUROR #2: No.

24 THE COURT: Just tell us what it was.

25 PROSPECTIVE JUROR #2: I misunderstood the

1 question. I'm sorry.

2 THE COURT: So you don't have an opinion about
3 the system that would affect your ability to be fair?

4 PROSPECTIVE JUROR #2: No.

5 THE COURT: Were you ever the victim of a crime?

6 PROSPECTIVE JUROR #2: No.

7 THE COURT: As far as you know, any family member
8 or friend ever the victim of a crime?

9 PROSPECTIVE JUROR #2: No.

10 THE COURT: Ever accused of a crime?

11 PROSPECTIVE JUROR #2: No.

12 THE COURT: Any family member or friend ever
13 accused?

14 PROSPECTIVE JUROR #2: No.

15 THE COURT: Have you ever sat on a jury?

16 PROSPECTIVE JUROR #2: No.

17 THE COURT: Trial jury or grand jury?

18 PROSPECTIVE JUROR #2: No.

19 THE COURT: Fine. Is there any reason why you
20 could not sit on this case?

21 PROSPECTIVE JUROR #2: You know, I'm really
22 nervous and emotional sometimes.

23 THE COURT: Miss Thompson, we're not going to sit
24 in judgment of anything you have to say. If you have a
25 concern, just tell us what it is. If you're saying you're

Voir Dire

211

1 nervous and therefore you can't sit on this case, you
2 prefer to sit on a civil case, is that what you're saying?

3 PROSPECTIVE JUROR #2: No.

4 THE COURT: Well, I'm sorry. You said you're
5 nervous?

6 PROSPECTIVE JUROR #2: Yeah. I get emotional
7 with, you know -- I don't know.

8 THE COURT: Would that cause you to lean to one
9 side or the other because you get emotional?

10 PROSPECTIVE JUROR #2: No.

11 THE COURT: Do you think if you served on this
12 jury that it would be injurious to your health, is that
13 what you're saying?

14 PROSPECTIVE JUROR #2: No.

15 THE COURT: Well, you said you get emotional?
16 You said you get emotional?

17 PROSPECTIVE JUROR #2: Well, you know, it depends
18 on something makes me cry or, you know, I can't deal with
19 certain things.

20 THE COURT: There's going to be an allegation
21 here of rape. They're going to --

22 PROSPECTIVE JUROR #2: Huh?

23 THE COURT: This case, it involves an allegation
24 of rape.

25 PROSPECTIVE JUROR #2: Yeah.

KL

1 THE COURT: There may be subject matters that you
2 might find unpleasant. Are you saying that you'd prefer
3 not to sit on this because of that?

4 PROSPECTIVE JUROR #2: Yeah.

5 THE COURT: All right.

6 I have your consents, counsel?

7 MR. RODRIGUEZ: Yes, your Honor.

8 MS. GREGORY: Yes.

9 THE COURT: Return downstairs to Central Jury.

10 (Whereupon, Prospective Juror #2 exited the
11 courtroom.)

12 THE COURT: I guess in that instance, Mr.
13 Rodriguez, when I sort of suggested to her that answer
14 there was no objection from you or your client, is that
15 right?

16 MR. RODRIGUEZ: Your Honor --

17 THE COURT: There's no objection to that, the
18 last questioning, is that correct?

19 MR. RODRIGUEZ: Your Honor, I don't mean to --

20 THE COURT: Mr. Rodriguez, I asked you a specific
21 question, sir.

22 MR. RODRIGUEZ: I didn't make an objection, your
23 Honor.

24 THE COURT: Is there an objection?

25 MR. RODRIGUEZ: I didn't make an objection.

1 THE COURT: If we could, let's have Miss
2 McIntosh, please.

3 (Whereupon, Prospective Juror #5 entered the
4 courtroom.)

5 THE COURT: Just in the front row will be fine.
6 Miss McIntosh, if you will, your first name,
7 please.

8 PROSPECTIVE JUROR #5: Erline McIntosh.

9 THE COURT: I believe we were at that point where
10 someone was accused of a crime?

11 PROSPECTIVE JUROR #5: My son.

12 THE COURT: Okay. How long ago are we talking
13 about?

14 PROSPECTIVE JUROR #5: April.

15 THE COURT: Of this year?

16 PROSPECTIVE JUROR #5: Yes.

17 THE COURT: And how old is he, ma'am?

18 PROSPECTIVE JUROR #5: Nineteen.

19 THE COURT: Did that occur here in Kings County
20 or someplace else?

21 PROSPECTIVE JUROR #5: Kings County.

22 THE COURT: What was he accused of doing?

23 PROSPECTIVE JUROR #5: I think, I'm not sure,
24 it's petty or grand larceny.

25 THE COURT: And what did they say, what

1 specifically are they accusing him of stealing?

2 PROSPECTIVE JUROR #5: Well, because he's 19,
3 they wouldn't tell me. And he didn't say. But I think it's
4 either Play Station or a Game Boy or something like that.

5 THE COURT: From a store?

6 PROSPECTIVE JUROR #5: No. From somebody.

7 THE COURT: From somebody else?

8 PROSPECTIVE JUROR #5: Yes.

9 THE COURT: Okay. When you first found out about
10 it, was he in jail at that point?

11 PROSPECTIVE JUROR #5: No.

12 THE COURT: All right. Has he ever been in jail,
13 I mean initially when he was arrested for it?

14 PROSPECTIVE JUROR #5: They came, they arrested
15 him. The police came to the house. I guess they had a
16 warrant for him and he was hiding. So I tried to get in
17 contact with him. And finally, I think in April, I think
18 it was from like October of the year before, 2004, when the
19 incident occurred, but they didn't pick him up until April.

20 THE COURT: Let me ask you this: At 19 years
21 old, and I'm not trying to embarrass you, had he had prior
22 problems with the criminal justice system?

23 PROSPECTIVE JUROR #5: Yes, yes.

24 THE COURT: Had he been arrested before?

25 PROSPECTIVE JUROR #5: Yes.

1 THE COURT: Had he done any time at all?

2 PROSPECTIVE JUROR #5: Prior to that? No.

3 THE COURT: And was it similar to what he was
4 accused of doing?

5 PROSPECTIVE JUROR #5: Correct.

6 THE COURT: Okay. Is the case pending now in
7 either 120 Schermerhorn or 360 Adams Street? Do you have
8 any idea?

9 PROSPECTIVE JUROR #5: No, it's not pending. He
10 went to Rikers for 30 days, and I think he's on probation
11 for five years.

12 THE COURT: Okay. So in all likelihood it's a
13 felony?

14 PROSPECTIVE JUROR #5: Yeah.

15 THE COURT: Okay. Do you think the fact that
16 your son has been convicted of a crime, do you think that's
17 a circumstance that would affect your ability to sit on a
18 criminal case and be fair to both sides?

19 PROSPECTIVE JUROR #5: No. I can be objective.

20 THE COURT: Okay. All right. You never sat on a
21 jury before?

22 PROSPECTIVE JUROR #5: No. I was, I've been
23 picked for service but never sat on a jury.

24 THE COURT: Now, these lawyers are going to ask
25 you some questions, and they may ask you some questions in

Voir Dire

216

1 a moment about this. And the only time they're going to be
2 allowed, I'm going to allow them to ask questions about
3 this is here now.

4 If you have any doubt about what they're asking
5 you, please have them repeat it. But above all, just be
6 candid. Okay?

7 PROSPECTIVE JUROR #5: Okay.

8 THE COURT: People?

9 MS. GREGORY: Miss McIntosh, do you think your
10 son was treated fairly during that process of his case?

11 PROSPECTIVE JUROR #5: I think so.

12 MS. GREGORY: Okay. Thank you.

13 THE COURT: Mr. Rodriguez?

14 MR. RODRIGUEZ: I have no questions.

15 THE COURT: Ma'am, step outside. We'll have you
16 back in a moment.

17 (Whereupon, Prospective Juror #5 exited the
18 courtroom.)

19 THE COURT: We'll have five minutes and we'll
20 resume with jury selection.

21 (Whereupon, a recess was taken.)

22 (After recess, trial continued outside the
23 presence of the prospective jurors as follows:)

24 THE COURT: Can we have Miss Murray come in.

25 MR. RODRIGUEZ: Your Honor, before we --

1 THE COURT: Mr. Rodriguez, please sit down,
2 please.

3 (Whereupon, Prospective Juror #10 entered the
4 courtroom.)

5 THE COURT: Ma'am, just have a seat right there.
6 I'm going to allow these lawyers to ask some questions.

7 PROSPECTIVE JUROR #10: Okay.

8 THE COURT: And primarily they're going to focus
9 on the things that happened to you and your father. They
10 are private and I want to keep them private.

11 PROSPECTIVE JUROR #10: Okay.

12 THE COURT: But there is some connection between
13 what happened to you and your father and the allegations
14 involved here.

15 PROSPECTIVE JUROR #10: Okay.

16 THE COURT: But please understand, nothing that
17 they say is evidence.

18 PROSPECTIVE JUROR #10: Okay.

19 THE COURT: But they just want to get your
20 opinion.

21 PROSPECTIVE JUROR #10: Okay.

22 THE COURT: Now, the rule is simple, to be a
23 juror you cannot allow experiences like that to affect any
24 decision you might make in terms of the guilt or non-guilt
25 of defendant.

1 I'd like you to be just quite candid with them
2 and tell them how you feel.

3 Beginning with the People. Please proceed.

4 MS. GREGORY: Thanks for answering the questions.

5 The incident with your father, you said that that
6 was about a year-and-a-half ago?

7 PROSPECTIVE JUROR #10: Uh-hum.

8 MS. GREGORY: Was that someone, and you might
9 have said this, that was known to him? Was it a stranger?
10 Who made these allegations?

11 PROSPECTIVE JUROR #10: I don't really have a
12 relationship with him anymore. I do know it was someone,
13 it was like someone he worked with.

14 MS. GREGORY: Okay. So someone he knew?

15 PROSPECTIVE JUROR #10: Someone he knew.

16 MS. GREGORY: Thanks. I don't have any other
17 questions.

18 THE COURT: Mr. Rodriguez?

19 MR. RODRIGUEZ: Thank you.

20 MR. RODRIGUEZ: Miss Murray, my client is charged
21 with rape. You haven't heard this, but during the course
22 of this trial you will hear that it's a knifepoint rape.
23 This is the allegations.

24 We believe you're also going to hear that the
25 victim went to the hospital, the person who was alleged to

1 be the victim went to the hospital.

2 You're also going to hear that the police came to
3 her.

4 Now, these things are very similar to your case.

5 PROSPECTIVE JUROR #10: Uh-hum.

6 MR. RODRIGUEZ: And the fact of the matter is
7 that I know this is not the individual who did anything to
8 you, but the fact of the matter is during the course of
9 this you're going to hear about, there's an allegations of
10 oral rape, involving oral sex, vaginal sex, force. You're
11 going to hear some threatening words and stuff like that.

12 And what I'm trying to get at is there a
13 possibility, right, is it possible that when you start
14 hearing these things, that you may begin to take a visual
15 look back at the things that happened to you such that it
16 could affect you in this case?

17 PROSPECTIVE JUROR #10: Ever since I was raped
18 and I've gone through therapy, the whole point of therapy
19 is to separate yourself and understand that you're very
20 different from everyone else. And I think that I can
21 separate myself from that.

22 MR. RODRIGUEZ: Okay. So --

23 THE COURT: Mr. Rodriguez, please allow her just
24 to finish the answer. Then you can proceed with the
25 question.

Voir Dire

220

1 PROSPECTIVE JUROR #10: That's pretty much it.

2 MR. RODRIGUEZ: Is that it?

3 THE COURT: Keep your voice up, ma'am.

4 MR. RODRIGUEZ: And again, so if you were chosen
5 on this jury, my client could have every assurance that you
6 would be just as fair to him in this case as any other case
7 that you might sit in front of, right?

8 PROSPECTIVE JUROR #10: Yes.

9 MR. RODRIGUEZ: Okay. Thank you.

10 THE COURT: Thank you, ma'am. Just step outside.

11 (Whereupon, Prospective Juror #10 exited the
12 courtroom.)

13 THE COURT: Is there anyone else either side
14 wants to voir dire similar to Miss Murray?

15 MS. GREGORY: No, I don't have anybody.

16 HE COURT: With that, then let's get these people
17 who were in the box in first and then those in the
18 audience.

19 (Whereupon, the prospective jurors entered the
20 courtroom.)

21 THE COURT: Those of you in the jury box will now
22 be questioned by the lawyers.

23 Let me just say this: Again, we keep it fairly
24 light. If they ask you a question, just don't answer the
25 question to get rid of them. If you don't understand the

1 question, ask them to repeat the question. Just don't
2 answer them so they'll go on to the next person. Make sure
3 that you understand the question and then try to answer it
4 as best you can.

5 Again, there are no right or wrong answers. Just
6 be candid.

7 Now, again, if they ask you anything of a
8 personal nature that you want to discuss privately, just
9 say so and we'll do that too. Okay.

10 With that, People.

11 MS. GREGORY: Thank you, your Honor.

12 Good morning, ladies and gentlemen. Again, my
13 name is Miss Gregory. I'm an assistant DA, and I'm going
14 to be handling this case.

15 As I said to the other groups that came before
16 you, we're just trying to find jurors that are a good fit
17 for this case; jurors who could use their own common sense
18 and their life's training to listen to the evidence and
19 come to a decision at the end.

20 Miss Ruben, how are you?

21 PROSPECTIVE JUROR #1: I'm fine.

22 MS. GREGORY: I had discussed with the other
23 group that when witnesses come in and take the witness
24 stand and the questions that are asked of them and their
25 responses, that that's testimony, that's what we call

1 testimony; they're going to, you know, respond to the
2 questions that are asked of them. And that testimony is
3 evidence. Do you understand that?

4 PROSPECTIVE JUROR #1: Yes.

5 MS. GREGORY: Miss Davis, how are you?

6 PROSPECTIVE JUROR #3: Okay.

7 MS. GREGORY: The Judge had explained during my
8 questioning a point that I was trying to get across that in
9 New York, in our laws, if you were selected as a juror in
10 this case, if you heard from one witness, and that was the
11 only witness that you heard from about a particular event,
12 if you're a juror and if you believed that witness beyond a
13 reasonable doubt, that our law says that you could find the
14 person guilty; you could base your decision on that one
15 witness' testimony.

16 Now, the question that I'm asking you and
17 everyone else is would you be able to follow that law?

18 PROSPECTIVE JUROR #3: Yes.

19 MS. GREGORY: Or would you think to yourself,
20 "you know what, I believe that person, but I'm going to
21 need something else besides that one person"?

22 Did I explain that Okay or --

23 PROSPECTIVE JUROR #3: Yeah, I could.

24 MS. GREGORY: You could?

25 PROSPECTIVE JUROR #3: (Shakes head up and down.)

1 MS. GREGORY: What about you, Miss Flores?

2 PROSPECTIVE JUROR #4: The same.

3 MS. GREGORY: Miss Flores, I'll stick with you
4 for a little bit.

5 We had brought up, or I had brought up the
6 concept or the idea of DNA being used to solve cases.
7 That's something that you've heard about?

8 PROSPECTIVE JUROR #4: Yeah.

9 MS. GREGORY: Obviously DNA involves science and
10 things that are, that at firsthand might seem difficult to
11 understand.

12 If you're selected as a juror in this case, could
13 you assure us that you could listen to that evidence?

14 PROSPECTIVE JUROR #4: Yes. That's no problem.

15 MS. GREGORY: And not just immediately think,
16 "oh, you know, that's over my head, that's science"?

17 PROSPECTIVE JUROR #4: No.

18 MS. GREGORY: Can everybody else do that, assure
19 us that they'd give that witness a chance who's going to be
20 explaining that science and how the DNA was used?

21 PROSPECTIVE JURORS: Yes.

22 MS. GREGORY: Miss Vandesande, good morning.

23 I had brought up the idea about how people
24 respond to certain things in their life, whether they be,
25 you know, positive things or negative things. Do you think

1 there's any pat way that a person who was the victim of a
2 crime should respond or behave?

3 PROSPECTIVE JUROR #7: A set way? No.

4 MS. GREGORY: What about you, Miss Cole-McNaught?

5 PROSPECTIVE JUROR #8: No.

6 MS. GREGORY: Miss Morrison, hi.

7 If the complainant in this case, the witness,
8 comes in and testifies about -- or in a manner that you
9 think might not be the way that you might expect her to,
10 would you automatically disregard what she has to say?

11 PROSPECTIVE JUROR #9: No.

12 MS. GREGORY: Is it fair to say that people have
13 a different response to stresses and pressure?

14 PROSPECTIVE JUROR #9: Yes.

15 MS. GREGORY: You know, I don't know what's going
16 to happen, I don't know if you'll be selected as a juror in
17 this case and I don't know the woman who takes the stand,
18 how she'll testify. Some people might think, "oh, she'll
19 need to cry because obviously she's talking about something
20 bad that happened." But I'd asked a gentleman in the other
21 group what if that wasn't her response. Can you imagine
22 why a person might not cry or might not appear emotional?

23 PROSPECTIVE JUROR #9: Yes. Because people
24 respond to issues in different ways.

25 MS. GREGORY: Miss Murray, hi. The incident that

1 the witnesses will be talking about, the majority of them
2 in this particular case happened some time ago, in 2002.
3 Can you imagine that the adjectives and words that a person
4 would use in describing an incident, you know, multiple
5 times, even if it was being recorded, can you imagine that
6 if they come back and they're talking about that same
7 incident, that they might not use the same exact words and
8 tell the story in the exact same sequence?

9 PROSPECTIVE JUROR #10: Uh-hum.

10 MS. GREGORY: And if a person, if you were
11 listening to a witness in a case explaining something that
12 happened, and just if they left something out or told it in
13 a different sequence, that alone, not saying whether you
14 found them credible or not, but just that alone, they
15 didn't say it, you know, the exact same way, would that
16 make you discredit what that person was saying?

17 PROSPECTIVE JUROR #10: No.

18 MS. GREGORY: Will everyone here be able to give
19 the witnesses a fair listen, and if you find what they're
20 saying credible, then render a verdict accordingly?

21 I'm not saying, you know, the person's going to
22 come in and tell a completely different story and ask you
23 in the end to say, "well, just because they told a
24 different story you should believe them anyway because of
25 what we discussed here." Obviously you're going to use

1 your common sense. And if you find the story not credible,
2 then you find it not credible regardless if they used the
3 same language or if they don't.

4 Mr. Burton, good morning.

5 PROSPECTIVE JUROR #12: Good morning.

6 MS. GREGORY: If you're selected as a juror in
7 this case, you indicated you had some friends in law
8 enforcement, and you indicated to us that that won't have
9 any bearing on how you decide the case or not?

10 PROSPECTIVE JUROR #12: Right.

11 MS. GREGORY: Additionally, if you're selected,
12 can you assure us that you'd listen to the evidence and
13 regardless of whether you feel some sympathy for either
14 side, whether it be the witness in the case or the
15 defendant, can you assure us that you could put that
16 sympathy aside when deciding the case?

17 PROSPECTIVE JUROR #12: Yes.

18 MS. GREGORY: And what about you, Miss Joseph?

19 PROSPECTIVE JUROR #6: Yes.

20 MS. GREGORY: Miss Pons, I'll ask you a final
21 question: If you're chosen as a juror in this case and I
22 bring on all my witnesses and you listened and you found
23 that I'd proven my case beyond a reasonable doubt, will you
24 be able to find this defendant guilty?

25 PROSPECTIVE JUROR #13: Yeah.

1 MS. GREGORY: And what about the rest of you?

2 PROSPECTIVE JURORS: Yes.

3 MS. GREGORY: Thank you all.

4 THE COURT: Mr. Rodriguez.

5 MR. RODRIGUEZ: Thank you, your Honor.

6 Good morning. Is it morning still? Yeah.

7 Is it possible -- I don't have the names with me,

8 anyway, so I'm just going to point. Is that Okay with you?

9 Is it possible for someone to be wrongly accused?

10 PROSPECTIVE JUROR #1: To be wrongly accused?

11 MR. RODRIGUEZ: Wrongly accused.

12 PROSPECTIVE JUROR #1: Yes, it's possible.

13 MR. RODRIGUEZ: Does the fact that there's an

14 indictment, you know, a piece of paper which is brought

15 saying that there's a crime and you're brought before a

16 court, the fact that there's an indictment, is it still

17 possible they could be wrongly accused?

18 PROSPECTIVE JUROR #1: There's a possibility

19 they could still wrongly be accused.

20 MR. RODRIGUEZ: Do you agree with that?

21 PROSPECTIVE JUROR #3: Yes.

22 PROSPECTIVE JUROR #4: Yes.

23 PROSPECTIVE JUROR #6: Yes.

24 PROSPECTIVE JUROR #13: Yes.

25 MR. RODRIGUEZ: How about you, do you agree with

1 that?

2 PROSPECTIVE JUROR #7: Yes.

3 PROSPECTIVE JUROR #8: Yes.

4 PROSPECTIVE JUROR #9: Yes.

5 MR. RODRIGUEZ: Do you agree with that?

6 PROSPECTIVE JUROR #10: Yes.

7 PROSPECTIVE JUROR #12: Yes.

8 MR. RODRIGUEZ: You've heard me talk about this,
9 and everyone has been paying attention so I'm not going to
10 belabor all the different things because you all were
11 paying attention when you were out there, so I'm just going
12 to avoid some of that, but if someone takes the stand, they
13 take the stand, and the district attorney made a big point
14 of, you know, saying just because people react differently,
15 you know, doesn't mean that they're not telling the truth,
16 right, or you know, you shouldn't presuppose that someone
17 should act a certain way, all right, but wouldn't you agree
18 that that's how you tell whether someone is being honest or
19 not, right, if the story is consistent, right?

20 Wouldn't you look for consistency in the story?

21 PROSPECTIVE JUROR #6: Yes.

22 MR. RODRIGUEZ: Wouldn't you look for, when you
23 look, wouldn't you look for how they tell the story? When
24 you hear the cross-examination of the questions they have,
25 you'd want to determine whether or not you want to give

1 credibility to the person, and wouldn't the story have to
2 make sense to you?

3 PROSPECTIVE JUROR #6: Right.

4 MR. RODRIGUEZ: It would have to make sense, what
5 someone says?

6 PROSPECTIVE JUROR #5: Yes.

7 MR. RODRIGUEZ: And maybe sometimes the People
8 want to tell you that the reactions are not what they would
9 think they are, but you also have your own life
10 experiences, correct, and there are some things you might
11 expect people to do, and if they don't do them, you could
12 use that to determine whether or not you want to give their
13 story credibility, correct?

14 PROSPECTIVE JUROR #5: Yes.

15 MR. RODRIGUEZ: Would you agree with that? Like
16 someone says "that doesn't make sense to me," even though
17 someone can argue, of course someone can argue, "yeah, well
18 everyone acts in different ways," but the reality is it
19 should have some sense in reality in the way we act,
20 because the only thing you have to bring in here is your
21 common sense which you're born with, your life experiences,
22 so you're not going to judge what somebody on Mars would do
23 but what people you might know would do, correct?

24 PROSPECTIVE JUROR #4: Yes.

25 THE COURT: The Court will give you instructions.

1 The tests you use to determine whether you believe someone
2 ultimately are the tests you use in dealing with daily
3 living with folks.

4 But again, you can take into account whether the
5 witness said something differently at an earlier time, the
6 manner of the witness, those are things you can take into
7 account.

8 Let's not belabor the point.

9 MR. RODRIGUEZ: I'll move along, your Honor.

10 Now, crying, right, that's another thing, do you
11 think someone should cry or not cry. You know, I don't
12 know, maybe someone can cry on call, I don't know. People,
13 actors, cry all the time, you know. I don't know if
14 there's some other experience that causes you to cry. I
15 don't know where people pull it from if they want to. So
16 the emotionality of someone on the stand, you have to take
17 that and view it with everything, you know what I mean?
18 Because she might cry. You know, she might say she's not
19 going to cry and fully know she's going to cry. I don't
20 know. I don't know.

21 THE COURT: This Court will explain to you
22 specifically that sympathy, empathy, are factors you can't
23 take into account. You're not to decide this case
24 emotionally.

25 MR. RODRIGUEZ: Thank you, your Honor.

1 All right. Now, the number of witnesses. Now,
2 you've heard the list of names, right? Those are potential
3 witnesses in the case. Now, again, there may be one
4 witness to the incident that happened, but you'll hear a
5 number of witnesses. But the fact that you hear a number
6 of witnesses and may not hear anything from any client, you
7 know, he has no obligation to testify in this case. He may
8 have nothing to say.

9 The fact that you don't hear anything from this
10 client, from my client, does not shift the burden to us to
11 disprove the case. Do we all accept that?

12 Do you accept that, Miss Pons?

13 PROSPECTIVE JUROR #13: I'm not sure. I think he
14 would be vital in this situation. I would like to hear
15 from him, but that's not my, you know, not my place to say.
16 But I think that if I heard his side of the story, that
17 would be helpful.

18 MR. RODRIGUEZ: But then that's to say that not
19 to hear his story would affect your ability too?

20 PROSPECTIVE JUROR #13: I don't know yet. I have
21 no idea. I haven't heard any of the case presented, so I'm
22 not sure at this point. I don't know. I have to hear
23 everything. There's more than one side to a story, so it
24 depends.

25 THE COURT: Initially I gave you some rules that

1 apply and I asked you -- you're not lawyers and I don't
2 expect you to remember them, but look, there is no
3 obligation on the part of a defendant to testify.

4 PROSPECTIVE JUROR #13: Okay. I understand that.

5 THE COURT: And if that does not occur, you
6 cannot raise it during jury deliberations. You must decide
7 the case on the basis of what you hear in terms of the
8 evidence from any other sources.

9 PROSPECTIVE JUROR #13: I understand.

10 THE COURT: The burden remains on the People,
11 never shifts.

12 PROSPECTIVE JUROR #13: I understand.

13 THE COURT: I would just ask counsel, look, it's
14 nice to get answers, but her answer is a common occurrence
15 with jurors. You're asking about expectations, and it's
16 her following the law. The law is she must obey the
17 Court's rule in terms of a defendant having no obligation
18 to testify and she can't use it against him. But if you're
19 asking about expectations, you're going to get the answer
20 she gave you in the first instance.

21 MR. RODRIGUEZ: I understand that. Maybe if I
22 reword the question.

23 THE COURT: That works fine, sir.

24 MR. RODRIGUEZ: All right.

25 Now that the Judge has explained that to you, all

1 right, can you honestly -- this is a very serious charge.

2 PROSPECTIVE JUROR #13: I understand.

3 MR. RODRIGUEZ: Remember voir dire, speak to
4 truth. Can you promise that you will not think about his
5 failure to testify in terms of coming to a decision about
6 whether or not the People have proved him guilty?

7 PROSPECTIVE JUROR #13: That could be done, yes.

8 MR. RODRIGUEZ: Will it be done?

9 PROSPECTIVE JUROR #13: Yes. It will be done,
10 yes.

11 MR. RODRIGUEZ: Can you promise me that as well,
12 ma'am? I saw you shaking your head at one point saying you
13 want to hear both sides. But understand what the Judge is
14 saying?

15 PROSPECTIVE JUROR #6: Yes, I understand.

16 MR. RODRIGUEZ: If you're on the case, you cannot
17 consider that at all. You must base your decision whether
18 or not the People have proven this case, proved their case,
19 whether he testifies or not. Can you promise me that you
20 will do that? This is a very important point.

21 PROSPECTIVE JUROR #6: Yes.

22 MR. RODRIGUEZ: Can you, sir?

23 PROSPECTIVE JUROR #12: Yes.

24 MR. RODRIGUEZ: Can you promise that?

25 PROSPECTIVE JUROR #10: Yes.

1 PROSPECTIVE JUROR #9: Yes.

2 PROSPECTIVE JUROR #8: Yes.

3 PROSPECTIVE JUROR #7: Yes.

4 MR. RODRIGUEZ: Can you promise me that?

5 PROSPECTIVE JUROR #4: Yes.

6 MR. RODRIGUEZ: Can you promise me that?

7 PROSPECTIVE JUROR #3: Yes.

8 MR. RODRIGUEZ: Can you promise me that?

9 PROSPECTIVE JUROR #1: Yes.

10 MR. RODRIGUEZ: Any one have any reservations
11 about that that they want to say? Anything that they're
12 thinking about regarding that?

13 Then we can move on. Okay.

14 You know what, everyone I imagine has been
15 listening very carefully to everything that's been said.
16 Is there any reason why you would not make a fair and
17 impartial juror in this case to both the prosecution and
18 the defense?

19 PROSPECTIVE JUROR #13: No, not at all.

20 MR. RODRIGUEZ: Any reason you would not be a
21 fair and impartial juror?

22 PROSPECTIVE JUROR #6: No.

23 MR. RODRIGUEZ: Any reason you would not?

24 PROSPECTIVE JUROR #12: No.

25 MR. RODRIGUEZ: Anything you can think of,

1 anything you can think of?

2 What about you, anything that you would not be
3 fair to both parties, all parties?

4 You ma'am, anything?

5 PROSPECTIVE JUROR #10: No.

6 MR. RODRIGUEZ: And you?

7 PROSPECTIVE JUROR #9: No.

8 PROSPECTIVE JUROR #8: No.

9 PROSPECTIVE JUROR #7: No.

10 MR. RODRIGUEZ: And you?

11 PROSPECTIVE JUROR #4: No.

12 PROSPECTIVE JUROR #3: No.

13 PROSPECTIVE JUROR #1: No.

14 MR. RODRIGUEZ: Okay. Thank you very much.

15 THE COURT: Folks, I want to thank you. Just
16 step outside. We'll have you back in a moment.

17 Everybody, please do not discuss the case, any
18 aspect of it, while you're outside, please.

19 (Whereupon, the prospective jurors exited the
20 courtroom.)

21 THE COURT: When both sides are ready, just
22 advise us.

23 (Brief pause in proceedings.)

24 THE CLERK: Counsel, we have four jurors
25 selected.

1 The entire panel for cause.

2 People?

3 MS. GREGORY: No.

4 THE CLERK: Defense?

5 MR. RODRIGUEZ: Yes. Number 13. I could not
6 believe that Miss Pons can follow the directions of the
7 Court regarding the burden of proof vis-a-vis my client not
8 having to testify in this case.

9 THE COURT: Miss Gregory, would you like to
10 respond?

11 MS. GREGORY: Yes, your Honor. Miss Pons did
12 raise a concern, but then she said she could follow the law
13 as given. She said she'd like to hear from him but could
14 follow the law.

15 THE COURT: The Court did not hear anything from
16 this juror that would reflect the juror is not prepared to
17 follow the law.

18 Challenge for cause is denied.

19 THE CLERK: Any other challenges for cause,
20 defense?

21 MR. RODRIGUEZ: None.

22 THE CLERK: Peremptorily then, only through
23 number nine.

24 People?

25 MS. GREGORY: Number three, Miss Davis.

1 Number six, Miss Joseph.

2 And number eight, Miss Cole-McNaught.

3 THE COURT: That's three, six and eight. Is that
4 correct, that you're exercising challenges on?

5 MS. GREGORY: Yes, your Honor.

6 THE COURT: Okay.

7 THE CLERK: Defense?

8 MR. RODRIGUEZ: Number four, Miss Flores.

9 That's it.

10 THE CLERK: Then Juror #1, Ruben, five, McIntosh,
11 seven, Vandesande and Morrison are acceptable?

12 MR. RODRIGUEZ: Yes.

13 MS. GREGORY: Yes.

14 THE CLERK: Ruben will become Juror #5, Erline
15 McIntosh six, Rebecca Vandesande seven and Morrison eight.

16 THE CLERK: The remaining three jurors,
17 peremptorily, People?

18 MS. GREGORY: No.

19 THE COURT: For the record, who are they?

20 THE CLERK: Burton, Murray and Pons.

21 THE COURT: People, any challenges?

22 MS. GREGORY: No.

23 THE CLERK: Defense?

24 MR. RODRIGUEZ: Yes. There's ten.

25 THE CLERK: Number ten, Murray.

1 So 12, Burton, and 13, Pons?

2 MR. RODRIGUEZ: Miss Murray and Miss Pons.

3 THE CLERK: Juror number twelve, Burton, is
4 acceptable to both sides?

5 MS. GREGORY: Yes.

6 THE CLERK: And becomes our ninth juror.

7 THE CLERK: That exhausts the round.

8 THE COURT: Okay.

9 Bring the selected jurors in, please, just the
10 selected jurors.

11 THE CLERK: There's nine challenges exercised by
12 the People, 11 by the defense.

13 (Transcript continued on next page.)
14
15
16
17
18
19
20
21
22
23
24
25

1 (Whereupon, the selected jurors entered the
2 courtroom.)

3 THE COURT: Folks, the five of you have been
4 selected to sit on this case. In a moment I'm going to
5 have the court officers escort you to the jury room.
6 You'll remain there and we'll advise you of the status of
7 the case.

8 I'm going to given you some instructions. These
9 instructions will govern your conduct. And when you are
10 sworn as a trial jury, I'll repeat these instructions, so
11 please keep them in mind.

12 You are to keep an open mind and not form, or
13 express, any opinion as to the guilt or non-guilt of this
14 defendant until you've heard all the evidence, the closing
15 arguments of the lawyers, you've been given my instructions
16 on the law and go into the jury room to begin jury
17 deliberations.

18 You are not to discuss this case with your fellow
19 jurors or with anyone, nor should you permit anyone in your
20 presence to talk about this case.

21 Do not visit any location mentioned. Do not try
22 to investigate any fact on your own. Do not read, watch or
23 listen to any accounts of this case, should there be any in
24 the news media.

25 And if you have a computer and surf the internet,

1 do not try to get any information about this case or about
2 the parties or about anybody involved in this case.

3 Immediately report any attempts by anyone to
4 approach you or a fellow juror about your jury service and
5 about this case.

6 And until you're discharged, you may not accept
7 compensation or discuss the acceptance of compensation for
8 supplying information about this case.

9 Now, with those rules in mind, take the jurors
10 out.

11 And just of Miss Vandesande remain for a moment,
12 but take the other jurors out, please.

13 (Selected jurors with the exception of Juror #7,
14 Rebecca Vandesande, exited the courtroom.)

15 THE COURT: Miss Vandesande, you had mentioned
16 you had a child care problem Thursday, is that correct?

17 JUROR #7: I just need to know the schedule and
18 organize things.

19 THE COURT: Well, we had intended to work a full
20 day Thursday. But if Thursday afternoon you have a child
21 care problem, we'll accommodate you.

22 JUROR #7: I can most likely get somebody to pick
23 her up. If I know ahead of time, I can organize it. I
24 just need to know the schedule.

25 THE COURT: I was going to try to open this

1 afternoon, but I still have to get three jurors and
2 probably three alternates, so that may take the rest of the
3 afternoon. So we may wind up opening tomorrow. If we do
4 that, then I'd like to at least try to get a full day in.

5 JUROR #7: Okay. So I can organize it.

6 THE COURT: Okay. For the moment then, just
7 remain in the jury room. Once I talk to the lawyers, we'll
8 get back to you and the other jurors. Just follow the
9 officer to the jury room.

10 (Juror #7 exited the courtroom.)

11 THE COURT: Miss Gregory, if we had gotten this
12 jury selected, could you have opened and put any witnesses
13 on today?

14 MS. GREGORY: I couldn't have put any witnesses
15 on, your Honor.

16 THE COURT: Okay. Then let's do this: Send
17 somebody down to get additional jurors. You said one of
18 the first four is not with us yet?

19 THE CLERK: Wasn't as of when we started
20 selections.

21 THE COURT: If they're all there, then I'm going
22 to let them go and have them come in tomorrow.

23 (Pause in proceedings.)

24 THE COURT: Take the defendant down. And when we
25 get the supplemental panel, let me know.

1 (Whereupon, a recess was taken.)

2 (After recess, whereupon the selected jurors
3 entered the courtroom.)

4 THE CLERK: Case on trial. All parties are
5 present.

6 Both sides waive the reading of the roll of the
7 selected jurors?

8 MR. RODRIGUEZ: Yes.

9 MS. GREGORY: Yes.

10 THE COURT: Folks, good afternoon.

11 We're still involved with jury selection. I
12 don't expect we're going to complete that before 5 o'clock.
13 So I think it's best that we break for the day with you. I
14 appreciate your coming in. But I'm asking you please
15 tomorrow morning be in the jury room 10 o'clock ready to
16 go. You can expect a full day.

17 Keep my warnings in mind. See you tomorrow.

18 (Whereupon the selected jurors exited the
19 courtroom.)

20 THE COURT: I need the seven who were in the
21 audience first, and then the others follow.

22 (Whereupon, the remaining prospective jurors from
23 the first panel entered the courtroom.)

24 THE COURT: He's going to call the names. Just
25 take the seat as directed.

1 THE CLERK: Debra Volpe, V-O-L-P-E, if you'll
2 take seat number one.

3 Salem Shavef, take seat two. Last name
4 S-H-A-V-E-F.

5 Linda Blye, last name spelled, B-L-Y-E, seat
6 three.

7 Mark Broomes, take seat four, last name spelled
8 B-R-O-O-M-E-S.

9 Steven Cole, last name is spelled C-O-L-E, seat
10 five.

11 Lorraine Barnaby, you'll take seat six. Last
12 name is spelled B-A-R-N-A-B-Y.

13 Bernadette Gonzalez, you'll take seat number
14 seven, please. Last name spelled G-O-N-Z-A-L-E-Z.

15 THE COURT: That exhausts the panel.

16 (Whereupon, a supplemental panel of prospective
17 jurors entered the courtroom.)

18 THE COURT: To those prospective jurors who just
19 came into the courtroom, I'm going to ask you to sit
20 quietly. We're in the process of trying to complete jury
21 selection. I have these seven from yesterday. I'm going
22 to try to expedite the handling of their voir dire, and
23 after that's done, I'm sure I'm not going to get what I
24 need, we will address you. But it will probably be after
25 lunch.

1 For the moment, just sit quietly. I know it's
2 going to seem strange because I haven't introduced anybody,
3 but please just listen.

4 If you will, Miss Volpe, the questionnaire,
5 please.

6 PROSPECTIVE JUROR #1: Debra Volpe, I'm 32. I
7 live in Dyker Heights.

8 College. I'm a nurse.

9 I'm single, with no children.

10 I enjoy swimming and the beach and sleeping.

11 I don't belong to any organizations.

12 And I read The Daily News.

13 THE COURT: Any friends or relatives in law
14 enforcement, ma'am?

15 PROSPECTIVE JUROR #1: No.

16 THE COURT: Any opinion about the criminal
17 justice system which would affect your ability to be fair?

18 PROSPECTIVE JUROR #1: No.

19 THE COURT: Were you, a family member or friend
20 ever the victim of a crime?

21 PROSPECTIVE JUROR #1: Yes.

22 THE COURT: Who are we talking about?

23 PROSPECTIVE JUROR #1: Me.

24 THE COURT: Are you able to talk about that
25 publicly?

1 PROSPECTIVE JUROR #1: No.

2 THE COURT: Ever accused of a crime?

3 PROSPECTIVE JUROR #1: No.

4 THE COURT: Any family member or friend ever
5 accused?

6 PROSPECTIVE JUROR #1: No.

7 THE COURT: Is there any reason why you can't
8 sit?

9 PROSPECTIVE JUROR #1: No.

10 THE COURT: Mr. Shavef, please, sir.

11 PROSPECTIVE JUROR #2: Salem Shavef. I'm age 38.
12 I live in Flatbush.

13 I have a master's in law and taxation. I'm an
14 editor and an attorney.

15 I'm single, no children.

16 My interests are traveling, writing, reading.

17 I belong to New York State Bar Association.

18 I don't have any favorite newspapers, but I read
19 everything, internet papers, TV.

20 THE COURT: Any friends or relatives in law
21 enforcement?

22 PROSPECTIVE JUROR #2: I have friends in the
23 Department of Probation.

24 THE COURT: Do you think those relationships
25 would affect your ability to be fair?

1 PROSPECTIVE JUROR #2: No.

2 THE COURT: Any opinion about the criminal
3 justice system which would affect your ability to be fair?

4 PROSPECTIVE JUROR #2: No.

5 THE COURT: Were you ever the victim of a crime?

6 PROSPECTIVE JUROR #2: Yes.

7 THE COURT: Are you able to talk about it
8 publicly?

9 PROSPECTIVE JUROR #2: Sure.

10 THE COURT: What happened?

11 PROSPECTIVE JUROR #2: About three years ago I
12 had my car broken into, an attempted theft.

13 THE COURT: Did you report that?

14 PROSPECTIVE JUROR #2: Yes.

15 THE COURT: Any arrests made?

16 PROSPECTIVE JUROR #2: No.

17 THE COURT: Do you think that circumstance would
18 affect your ability to be fair?

19 PROSPECTIVE JUROR #2: No.

20 THE COURT: In terms of friend or family member
21 ever having been the victim of a crime, anything like that?

22 PROSPECTIVE JUROR #2: No.

23 THE COURT: Were you ever accused of a crime?

24 PROSPECTIVE JUROR #2: No.

25 THE COURT: As far as you know, any family member

1 or friend ever accused?

2 PROSPECTIVE JUROR #2: No.

3 THE COURT: Any prior jury service?

4 PROSPECTIVE JUROR #2: No.

5 THE COURT: First time?

6 PROSPECTIVE JUROR #2: Yep.

7 THE COURT: Is there any reason why you couldn't
8 sit on this case?

9 PROSPECTIVE JUROR #2: No.

10 THE COURT: Miss Blye, if you will, ma'am.

11 PROSPECTIVE JUROR #3: Linda Blye, 55. I live in
12 Sheepshead Bay.

13 College. I'm a teacher.

14 I'm single. I have three children, all over 18.

15 Interests and hobbies vary.

16 Organizations, teachers and school associations.

17 I read all the newspapers. No favorite.

18 THE COURT: Any friends or relatives in law
19 enforcement?

20 PROSPECTIVE JUROR #3: I have a daughter who's a
21 corrections officer.

22 THE COURT: Do you think that relationship would
23 affect your ability to be fair?

24 PROSPECTIVE JUROR #3: No.

25 THE COURT: Any opinion about the criminal

1 justice system which would prevent you from being fair?

2 PROSPECTIVE JUROR #3: No.

3 THE COURT: Were you, a family member or friend
4 ever the victim of a crime? Car stolen, house burglarized
5 anything like that?

6 PROSPECTIVE JUROR #3: Me and a friend.

7 THE COURT: What was that?

8 PROSPECTIVE JUROR #3: Me, my house was broken
9 into. A friend, car stolen.

10 THE COURT: Do you think those circumstances
11 would affect your ability to sit on this case?

12 PROSPECTIVE JUROR #3: No.

13 THE COURT: Were you, a family member or friend
14 ever accused of a crime?

15 PROSPECTIVE JUROR #3: No.

16 THE COURT: Any prior jury service where you
17 actually sat on a jury or grand jury?

18 PROSPECTIVE JUROR #3: No.

19 THE COURT: Any reason you couldn't sit on this
20 case?

21 PROSPECTIVE JUROR #3: Open school night at
22 school is on Thursday and Friday.

23 THE COURT: At night?

24 PROSPECTIVE JUROR #3: Thursday night. Friday
25 day.

1 THE COURT: What time is it Friday?

2 PROSPECTIVE JUROR #3: Friday's at 6:00.

3 THE COURT: Six in the evening?

4 PROSPECTIVE JUROR #3: Yes.

5 THE COURT: And Thursday?

6 PROSPECTIVE JUROR #3: I'm sorry. Thursday in
7 the evening. Friday it's in the afternoon, at 12:00.

8 THE COURT: Okay. As I told you, we will
9 probably work a full day tomorrow. Friday it will only be
10 up until lunch. So, I mean, we can probably accommodate
11 you in that regard if selected. Okay?

12 PROSPECTIVE JUROR #3: Yes.

13 THE COURT: Thank you.

14 Mr. Broomes, if you will, sir.

15 PROSPECTIVE JUROR #4: Mark Broomes, age 20. I
16 live in Crown Heights.

17 Hold a regents diploma. I'm a secretary.

18 Single, no children.

19 No interests or hobbies I'd like to discuss.

20 No organizations.

21 I read The Times, as well as The Daily News.

22 THE COURT: Any friends or relatives in law
23 enforcement?

24 PROSPECTIVE JUROR #4: No.

25 THE COURT: Any opinion about the system,

1 criminal justice system that is, that would affect your
2 ability to be fair?

3 PROSPECTIVE JUROR #4: No.

4 THE COURT: Ever the victim of a crime?

5 PROSPECTIVE JUROR #4: No.

6 THE COURT: Any family member or friend ever the
7 victim of a crime?

8 PROSPECTIVE JUROR #4: No.

9 THE COURT: Ever accused of a crime?

10 PROSPECTIVE JUROR #4: No.

11 THE COURT: Any family member or friend ever
12 accused?

13 PROSPECTIVE JUROR #4: No.

14 THE COURT: Any prior jury service?

15 PROSPECTIVE JUROR #4: No.

16 THE COURT: First time?

17 PROSPECTIVE JUROR #4: Yes.

18 THE COURT: Is there any reason why you couldn't
19 sit on this case?

20 PROSPECTIVE JUROR #4: No.

21 THE COURT: Thank you.

22 THE COURT: Mr. Cole.

23 PROSPECTIVE JUROR #5: Steven Cole, 57. Windsor
24 Terrace.

25 College. Chef. Married. No children.

1 THE COURT: Your wife, what does she do, sir?

2 PROSPECTIVE JUROR #5: She's an administrator for
3 Easter Seals.

4 THE COURT: Any areas of interest or hobbies
5 you'd care to mention?

6 PROSPECTIVE JUROR #5: No. Not to discuss.

7 THE COURT: Organizations?

8 PROSPECTIVE JUROR #5: No.

9 THE COURT: Favorite newspaper?

10 PROSPECTIVE JUROR #5: I don't have one. I just,
11 I get my news from the radio, TV and my wife.

12 THE COURT: Sounds familiar.

13 PROSPECTIVE JUROR #5: Right.

14 THE COURT: Yes, sir.

15 Any friends or relatives in law enforcement?

16 PROSPECTIVE JUROR #5: Brother-in-law retired
17 police officer. Friend who's a judge.

18 THE COURT: Do you think those relationships
19 would affect your ability to be fair?

20 PROSPECTIVE JUROR #5: No.

21 THE COURT: Any opinion about the criminal
22 justice system which would affect your ability to be fair?

23 PROSPECTIVE JUROR #5: No.

24 THE COURT: Were you, a family member or friend
25 ever the victim of a crime?

1 PROSPECTIVE JUROR #5: My wife. Her bag was
2 stolen.

3 THE COURT: Was that reported?

4 PROSPECTIVE JUROR #5: Yes.

5 THE COURT: Do you think that circumstance would
6 affect your ability to be fair?

7 PROSPECTIVE JUROR #5: No.

8 THE COURT: Ever accused of a crime?

9 PROSPECTIVE JUROR #5: No.

10 THE COURT: As far as you know, any family member
11 or friend ever accused?

12 PROSPECTIVE JUROR #5: No.

13 THE COURT: Prior jury service, any at all?

14 PROSPECTIVE JUROR #5: Yes.

15 THE COURT: Civil or criminal?

16 PROSPECTIVE JUROR #5: Last one was criminal.

17 THE COURT: What was the charge, do you remember?

18 PROSPECTIVE JUROR #5: It was drug possession,
19 drug dealing.

20 THE COURT: Were you one of the first 12 or an
21 alternate juror?

22 PROSPECTIVE JUROR #5: First 12.

23 THE COURT: Did the jury deliberate?

24 PROSPECTIVE JUROR #5: Yes.

25 THE COURT: Was a verdict reached?

1 PROSPECTIVE JUROR #5: Yes.

2 THE COURT: What was the verdict?

3 PROSPECTIVE JUROR #5: Not guilty.

4 THE COURT: Anything about your service on that
5 case that would affect your ability to sit on this case?

6 PROSPECTIVE JUROR #5: No.

7 THE COURT: Is there any reason why you couldn't
8 sit?

9 PROSPECTIVE JUROR #5: I have -- I can't sit here
10 after the 3rd of November. I'm going on vacation, I think
11 the Friday, November 4th. So that's it. The way you say
12 it, it should be over by then.

13 THE COURT: Yes, sir.

14 PROSPECTIVE JUROR #5: Otherwise I don't have a
15 problem.

16 THE COURT: All right.

17 There's no way of knowing. Once the case is
18 given to the jury, it's the jury's call.

19 Counsels, do I have your consents on that one?

20 MS. GREGORY: Yes.

21 MR. RODRIGUEZ: Yes, your Honor.

22 THE COURT: Enjoy your vacation. Going someplace
23 warm?

24 PROSPECTIVE JUROR #5: Excuse me?

25 THE COURT: Someplace warm?

1 PROSPECTIVE JUROR #5: I'm going to Florida, if
2 it's still there. Thank you.

3 THE COURT: Yes, sir.

4 (Whereupon, Prospective Juror #5 exited the
5 courtroom.)

6 THE COURT: Miss Barnaby, if you will, please.

7 PROSPECTIVE JUROR #6: Lorraine Barnaby. I'm 39.
8 I live in the Bushwick area.

9 College. I'm a student. I'm married. My
10 husband is self-employed. I have two children, 19 and 18.
11 They're both away at college.

12 No interests of anything except my kids and I
13 love to read.

14 No organizations. No favorite newspaper. I
15 watch TV, radio, internet.

16 THE COURT: Any friends or relatives in law
17 enforcement?

18 PROSPECTIVE JUROR #6: I have a cousin who's a
19 lawyer.

20 THE COURT: Does he or she do criminal law?

21 PROSPECTIVE JUROR #6: No.

22 THE COURT: In any event, would that relationship
23 affect your ability to be fair?

24 PROSPECTIVE JUROR #6: No.

25 THE COURT: Any opinion about the criminal

Voir Dire

255

1 justice system which would affect your ability to be fair?

2 PROSPECTIVE JUROR #6: No.

3 THE COURT: Were you ever the victim of a crime?

4 PROSPECTIVE JUROR #6: No.

5 THE COURT: As far as you know, any family member
6 or friend ever the victim of a crime?

7 PROSPECTIVE JUROR #6: No.

8 THE COURT: Ever accused of a crime?

9 PROSPECTIVE JUROR #6: No.

10 THE COURT: What about a family member or friend?

11 PROSPECTIVE JUROR #6: No.

12 THE COURT: Any prior jury service where you
13 actually served on a jury?

14 PROSPECTIVE JUROR #6: First time.

15 THE COURT: Any reason why you can't sit?

16 PROSPECTIVE JUROR #6: No.

17 THE COURT: Okay. All right.

18 Miss Gonzalez, if you will, please.

19 PROSPECTIVE JUROR #7: Bernadette Gonzalez, age
20 39. I live at --

21 THE COURT: Just the area.

22 PROSPECTIVE JUROR #7: Bed-Stuy.

23 THE COURT: Educational background. College?
24 High school? What?

25 PROSPECTIVE JUROR #7: Just high school, that's

1 it.

2 THE COURT: Are you working?

3 PROSPECTIVE JUROR #7: Unemployed.

4 THE COURT: Married? Single? Divorced?

5 PROSPECTIVE JUROR #7: Single.

6 THE COURT: Any children?

7 PROSPECTIVE JUROR #7: Four.

8 THE COURT: Any areas of interest or hobbies
9 you'd care to mention?

10 PROSPECTIVE JUROR #7: Music, that's it.

11 THE COURT: Any organizations you belong to you'd
12 care to mention?

13 PROSPECTIVE JUROR #7: No.

14 THE COURT: Favorite newspaper, at least one you
15 read more so than others?

16 PROSPECTIVE JUROR #7: Not at all.

17 THE COURT: How do you get your news?
18 Television?

19 PROSPECTIVE JUROR #7: Yes.

20 THE COURT: You watch a lot of it?

21 PROSPECTIVE JUROR #7: No.

22 THE COURT: Any friends or relatives in law
23 enforcement?

24 PROSPECTIVE JUROR #7: No.

25 THE COURT: Any opinion about the criminal

1 justice system which would affect your ability to be fair?

2 PROSPECTIVE JUROR #7: Yes.

3 THE COURT: Okay. All right.

4 Folks, I'm sorry, I need to speak to two of these
5 people privately. I'm going to do so. I'll have you back
6 in a moment. Just step out. Do not leave the floor.

7 Miss Gonzalez, remain where you are.

8 Everybody else step out of the box. We'll have
9 you back shortly.

10 I'm going to speak to you as well, Miss Volpe. It
11 will be after Miss Gonzalez.

12 PROSPECTIVE JUROR #1: I'm sorry?

13 THE COURT: You'll be next.

14 PROSPECTIVE JUROR #1: Okay. I'm sorry.

15 THE COURT: No problem.

16 (Whereupon, all prospective jurors exited the
17 courtroom with the exception of Prospective Juror #7.)

18 THE COURT: Miss Gonzalez, if you will, please,
19 you have an opinion. Just tell us what it is.

20 PROSPECTIVE JUROR #7: I just live in the area.

21 THE COURT: Oh, Okay. You live in the area?

22 PROSPECTIVE JUROR #7: And I'm too familiar with
23 the neighborhood.

24 THE COURT: Okay. You think as a result of that
25 you don't want to sit on this case?

1 PROSPECTIVE JUROR #7: No.

2 THE COURT: Does either side wish to pursue it
3 any further?

4 MS. GREGORY: No, your Honor.

5 MR. RODRIGUEZ: No.

6 THE COURT: Do I have your consents?

7 MS. GREGORY: Yes.

8 MR. RODRIGUEZ: Yes, your Honor.

9 THE COURT: Ma'am, thank you very much. Return
10 downstairs to the second floor where you came from
11 yesterday.

12 PROSPECTIVE JUROR #7: Okay.

13 THE COURT: Miss Volpe, please.

14 (Whereupon, Prospective Juror #7 exited the
15 courtroom and Prospective Juror #1 entered the courtroom.)

16 THE COURT: If you will, ma'am, just have a seat.
17 Your name again, please?

18 PROSPECTIVE JUROR #1: Debra Volpe.

19 THE COURT: You had indicated, I believe, you had
20 been the victim of a crime?

21 PROSPECTIVE JUROR #1: I was sexually assaulted.

22 THE COURT: How long ago are we talking about?

23 PROSPECTIVE JUROR #1: About ten years ago.

24 THE COURT: Was that here in Kings County?

25 PROSPECTIVE JUROR #1: Yes.

1 THE COURT: Any arrests made?

2 PROSPECTIVE JUROR #1: No. I never reported it.

3 THE COURT: After the event, did you consult any
4 doctor in terms of counseling and stuff like that?

5 PROSPECTIVE JUROR #1: Yes, counseling I went to.

6 THE COURT: How long were you involved with that?

7 PROSPECTIVE JUROR #1: Couple of years.

8 THE COURT: Are you presently involved with any
9 groups that --

10 PROSPECTIVE JUROR #1: No.

11 THE COURT: -- advocate, I mean advocate against
12 violence against women?

13 PROSPECTIVE JUROR #1: No.

14 THE COURT: Do you think what happened to you --
15 I mean, was this a stranger or a friend or what?

16 PROSPECTIVE JUROR #1: Stranger.

17 THE COURT: Do you think what happened to you, do
18 you think you can separate that from this case?

19 PROSPECTIVE JUROR #1: No.

20 THE COURT: You cannot. Okay, fine.

21 Counsel, any objection to her being excused?

22 MS. GREGORY: No.

23 MR. RODRIGUEZ: No.

24 THE COURT: Thank you, ma'am.

25 (Whereupon, Prospective Juror #1 exited the

1 courtroom.)

2 THE COURT: Let's get those people in the box
3 back in and the people in the audience as well.

4 (Whereupon, all prospective jurors entered the
5 courtroom.)

6 THE COURT: Now, I have introduced to you the
7 attorneys and the defendant. Do any of these individuals
8 seem familiar in the sense that before you came in
9 yesterday you might have seen them outside on the street?

10 This crime is alleged to have happened in the
11 vicinity of 478 Marcy Avenue. Some of you may have an
12 idea where it is. I'm more concerned about whether you
13 live, visit or work near that address on a regular basis.
14 Anybody?

15 PROSPECTIVE JURORS: No.

16 THE COURT: I've read some names to you, Gina
17 Colon, Tammy Little, Detective Steve Litwin, Police Officer
18 Kevin Fedynak, a Nurse Durant from Woodhull Hospital, a
19 Nurse Dan McSwiggan, Marie Samples, Don Lewittes, Aubry
20 Weeks. Any of those names seem familiar to anyone?

21 PROSPECTIVE JURORS: No.

22 THE COURT: Now, other than what's alleged here,
23 do you think you know anything at all about this case? I'm
24 not talking about what the lawyers have said, but read
25 anything or heard anything about the case at all?

1 PROSPECTIVE JURORS: No.

2 THE COURT: And finally, is there anybody who
3 feels that he or she can't follow the law as I give it?

4 Okay. In the absence of any statement to the
5 contrary, we'll proceed now.

6 Miss Gregory, if you will, please.

7 MS. GREGORY: Thank you, your Honor.

8 Good afternoon, ladies and gentlemen.

9 Again, my name is Miss Gregory and I'm the
10 Assistant DA handling this case.

11 You've been here both days, you've heard a lot of
12 the issues that have been brought up by both Mr. Rodriguez
13 and I have brought up with the people that have sat before
14 you.

15 Mr. Shavef, how are you?

16 PROSPECTIVE JUROR #2: Fine.

17 MS. GREGORY: I just want to touch on something
18 that I had brought up before about the one witness. And
19 knowing that that's our law in New York -- and you're an
20 attorney, right?

21 PROSPECTIVE JUROR #2: Yes.

22 MS. GREGORY: Would you need to hear more even if
23 you know that that's the rule of law?

24 PROSPECTIVE JUROR #2: No, I wouldn't.

25 MS. GREGORY: What about you, Miss Blye? You'd

1 be able to base your decision on the one witness, if you
2 believed that person?

3 PROSPECTIVE JUROR #3: Yes.

4 MS. GREGORY: And Mr. Broomes?

5 PROSPECTIVE JUROR #4: Uh-hum.

6 MS. GREGORY: Miss Barnaby?

7 PROSPECTIVE JUROR #6: Yes.

8 MS. GREGORY: Miss Blye, I have discussed that in
9 this case if selected as a juror you'll hear about some DNA
10 evidence. You've heard of DNA?

11 PROSPECTIVE JUROR #3: I was a medical
12 technologist.

13 MS. GREGORY: I'm sorry?

14 PROSPECTIVE JUROR #3: I was a medical
15 technologist.

16 MS. GREGORY: Okay. So you've heard of it?

17 PROSPECTIVE JUROR #3: I've done testing.

18 MS. GREGORY: Pardon?

19 PROSPECTIVE JUROR #3: I've done testing.

20 MS. GREGORY: So I would expect you wouldn't have
21 any problem listening and understanding?

22 PROSPECTIVE JUROR #3: No.

23 THE COURT: But do you understand this, though,
24 ma'am, a witness who's called in who may have done work
25 with this, you would have to rely only on that person's

1 testimony in terms of making a decision? You can't
2 interject your own opinion.

3 PROSPECTIVE JUROR #3: Since I've done it, I'm
4 sure techniques and many things have changed.

5 THE COURT: Okay.

6 Please proceed, Miss Gregory.

7 MS. GREGORY: Mr. Broomes, would you be able to
8 listen to that type of evidence?

9 PROSPECTIVE JUROR #4: Yes.

10 MS. GREGORY: What about you, Miss Barnaby?

11 PROSPECTIVE JUROR #6: Yes.

12 MS. GREGORY: Miss Barnaby, I had discussed, you
13 know, expectations of what one might expect a person, how a
14 person would react during a sexual assault, and
15 additionally, when that person would have to relay that
16 information, whether it be to other people, police
17 officers, hospital personnel or later at a later point
18 during the trial. And I think -- and I'm asking you if you
19 agree with this, that people react differently?

20 PROSPECTIVE JUROR #6: Uh-hum.

21 MS. GREGORY: You wouldn't expect someone to act
22 specifically one way or another?

23 PROSPECTIVE JUROR #6: No.

24 MS. GREGORY: And if you were selected as a juror
25 in this case, you'd be able to listen to the evidence, and

1 if you found it to be credible beyond a reasonable doubt,
2 would you be able to find the defendant guilty?

3 PROSPECTIVE JUROR #6: Yes.

4 MS. GREGORY: What about everybody else?

5 PROSPECTIVE JURORS: Yes.

6 MS. GREGORY: Thank you.

7 THE COURT: Mr. Rodriguez.

8 MR. RODRIGUEZ: Thank you, your Honor. Good
9 afternoon, ladies and gentlemen.

10 You've been here two days, heard a lot of what's
11 been said, right? Anything that was said during the course
12 of these two days that struck you that you want to talk
13 about now in terms of what could potentially affect your
14 ability to be a fair juror here?

15 Anything with you?

16 PROSPECTIVE JUROR #4: No.

17 MR. RODRIGUEZ: Could you be a fair juror in this
18 case?

19 PROSPECTIVE JUROR #6: Yes.

20 MR. RODRIGUEZ: My client's charged with a
21 serious crime, rape, right?

22 PROSPECTIVE JUROR #6: Uh-hum.

23 MR. RODRIGUEZ: Can you look at him and not make
24 a judgment on him?

25 PROSPECTIVE JUROR #6: Yeah.

1 MR. RODRIGUEZ: Until, unless and until you hear
2 evidence against him at the trial?

3 PROSPECTIVE JUROR #6: Yes.

4 MR. RODRIGUEZ: All right.

5 Now, you have no preconceived notions about him,
6 right?

7 PROSPECTIVE JUROR #6: No.

8 MR. RODRIGUEZ: He's presumed innocent, correct?

9 PROSPECTIVE JUROR #6: Yes.

10 MR. RODRIGUEZ: And the Judge has told you that,
11 right?

12 PROSPECTIVE JUROR #6: Yes.

13 MR. RODRIGUEZ: And he stays and remains that
14 way, and the Judge will tell you, unless he's convicted by
15 the People, by the prosecutor, right?

16 PROSPECTIVE JUROR #6: Right.

17 MR. RODRIGUEZ: Somebody is going to take the
18 stand here, right?

19 PROSPECTIVE JUROR #6: Uh-hum.

20 MR. RODRIGUEZ: You have the right to use
21 whatever in your experience in life to determine whether or
22 not that person taking the stand is telling the truth.

23 PROSPECTIVE JUROR #6: Right.

24 MR. RODRIGUEZ: Just because somebody raises
25 their hand to tell the truth, the whole truth and nothing

1 but the truth, so help he God, does not mean they're lying
2 or telling the truth, does it?

3 PROSPECTIVE JUROR #6: Right.

4 MR. RODRIGUEZ: You have to determine that,
5 right?

6 PROSPECTIVE JUROR #6: Uh-hum.

7 MR. RODRIGUEZ: Are you willing to do that?

8 PROSPECTIVE JUROR #6: Yes.

9 MR. RODRIGUEZ: If you hear differences in the
10 story -- now, the prosecutor just talked about whether or
11 not someone changed, you know, makes different stories and
12 reacts different ways, but sometimes also when you tell
13 different stories, it's because you're not telling the
14 truth, that's also a possibility too?

15 PROSPECTIVE JUROR #6: Yes.

16 MR. RODRIGUEZ: Would you agree with that?

17 PROSPECTIVE JUROR #4: Yes.

18 MR. RODRIGUEZ: How about you?

19 PROSPECTIVE JUROR #2: Yes.

20 PROSPECTIVE JUROR #3: Yes.

21 MR. RODRIGUEZ: Changing the stories may indicate
22 more than just a reaction to something, it could indicate
23 falsehood, correct?

24 PROSPECTIVE JUROR #2: Yes.

25 MR. RODRIGUEZ: Right?

1 PROSPECTIVE JUROR #3: Yes.

2 PROSPECTIVE JUROR #4: Yes.

3 MR. RODRIGUEZ: You're not going to have a magic
4 ball that's going to tell you what really happened there,
5 so you have to listen to all of the evidence. Can you
6 promise me that you will listen to everything and wait
7 until the Judge instructs you on the law before you make
8 your decision?

9 PROSPECTIVE JUROR #3: Uh-hum.

10 MR. RODRIGUEZ: Because the prosecutor is going
11 to put somebody on the stand first, "well, she said he did
12 it, he must have done it," right? Or are you going to
13 listen to everything before you make that determination?

14 PROSPECTIVE JUROR #3: I have to listen to
15 everything.

16 MR. RODRIGUEZ: You're going to listen to
17 everything?

18 PROSPECTIVE JUROR #2: Yes.

19 PROSPECTIVE JUROR #4: Yes.

20 PROSPECTIVE JUROR #6: Yes.

21 MR. RODRIGUEZ: Not just the questions the
22 prosecutor asks, but perhaps any cross-examination I may
23 have, right, and listen to what other statements the
24 complainant, the accuser, made at other times, correct?
25 Presumed innocent, right?

1 PROSPECTIVE JUROR #4: Yes.

2 MR. RODRIGUEZ: They don't prove their case
3 beyond a reasonable doubt, you're going to acquit?

4 PROSPECTIVE JUROR #2: Yes.

5 MR. RODRIGUEZ: You too?

6 PROSPECTIVE JUROR #3: Yes.

7 MR. RODRIGUEZ: You too?

8 PROSPECTIVE JUROR #4: Yes.

9 MR. RODRIGUEZ: You too?

10 PROSPECTIVE JUROR #6: Yes.

11 MR. RODRIGUEZ: Have any questions of me? Can
12 you be fair to both parties?

13 PROSPECTIVE JUROR #4: Yes.

14 MR. RODRIGUEZ: Can you?

15 PROSPECTIVE JUROR #2: Yes.

16 MR. RODRIGUEZ: Can you?

17 PROSPECTIVE JUROR #3: Yes.

18 MR. RODRIGUEZ: Can you?

19 PROSPECTIVE JUROR #6: Yes.

20 MR. RODRIGUEZ: Thank you.

21 THE COURT: Those of you in the audience who have
22 not had the pleasure, see you this afternoon outside the
23 courtroom about 2:30, please. Outside the courtroom, 2:30.
24 Don't come in. Just remain outside the courtroom. 2:30.
25 I'm allowing for the elevators; they don't work quite as

1 well as they should. So please be outside the courtroom at
2 2:30. We're going to try to get out of here before 5
3 o'clock. So please, see you at 2:30. Any questions, ask
4 the court officers.

5 (Whereupon, the prospective jurors in the
6 audience exited the courtroom.)

7 THE COURT: Those of you in the box, don't leave
8 the floor. Just momentarily wait outside and we'll advise
9 you of your status, please.

10 (Whereupon, the prospective jurors in the box
11 exited the courtroom.)

12 THE COURT: Any time you're ready, let Mr. LaRose
13 know.

14 (Pause in proceedings.)

15 THE CLERK: Counsel, we have nine jurors
16 selected. Four jurors in the box.

17 For cause, People?

18 MS. GREGORY: None.

19 THE CLERK: Defense?

20 MR. RODRIGUEZ: None.

21 THE CLERK: Jurors two three and four only at
22 this time, peremptorily, People?

23 MS. GREGORY: Number four.

24 THE COURT: That's Broomes, right?

25 MS. GREGORY: Yes.

1 THE COURT: Okay.

2 THE CLERK: Defense?

3 MR. RODRIGUEZ: Miss Blye.

4 THE CLERK: Number three.

5 MR. RODRIGUEZ: That's it.

6 THE CLERK: Juror #2, Salem Shavef, is
7 acceptable?

8 MR. RODRIGUEZ: Yes.

9 THE CLERK: He becomes our tenth juror selected.
10 Juror #6, peremptorily, People?

11 MS. GREGORY: No.

12 THE CLERK: Defense?

13 MR. RODRIGUEZ: No.

14 THE CLERK: Then juror Lorraine Barnaby becomes
15 our 11th juror.

16 THE COURT: Get those two people in, please.

17 THE CLERK: Ten challenges for the People, twelve
18 for the defense.

19 (Whereupon, the selected jurors entered the
20 courtroom.)

21 THE COURT: The two of you have been selected to
22 sit on this case. In a moment you're going to go to the
23 jury room. Once you're there and familiarize yourself with
24 the jury room, you can leave for the day.

25 You're to be in the jury room tomorrow morning at

1 10 o'clock. You can expect a full day.

2 I'm going to give you some instructions. Once
3 you are with the entire jury, once we have the trial jury
4 selected, I'll repeat these instructions. Please keep them
5 in mind.

6 You're not to form, or express, any opinion as to
7 the guilt or non-guilt of this defendant until all the
8 evidence has been received, you heard the arguments of the
9 attorneys, my instructions on the law, you've gone into the
10 jury room to begin jury deliberations.

11 Do not discuss this case with anyone, including
12 your fellow jurors. And you should not allow anyone in
13 your presence to talk about this case.

14 Do not visit any location mentioned. Do not try
15 to investigate any fact on your own.

16 If there are accounts of this case in the media,
17 don't read, watch or listen to those accounts. And
18 certainly don't use the computer to surf the internet
19 trying to get information about this case or anybody
20 involved with it.

21 Immediately report any attempts by anybody to
22 approach you or any fellow juror.

23 And until you're discharged, you may not accept
24 compensation or discuss the acceptance of compensation for
25 supplying information about this case.

1 With those warnings in mind, have a pleasant day.

2 See you all tomorrow in the jury room, 10 o'clock.

3 (Whereupon, the selected jurors exited the
4 courtroom.)

5 THE COURT: All right, counsel, I've asked the
6 jurors to be back at 2:30. You should govern yourself
7 accordingly. See you then.

8 (Whereupon, the luncheon recess was taken.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 AFTERNOON SESSION:

2 (Case on trial continued. No selected jurors or
3 prospective jurors present.)

4 THE CLERK: Case on trial. All parties are
5 present.

6 THE COURT: We have 30 new jurors. Let's get
7 them in, please.

8 (Whereupon, a supplemental panel of prospective
9 jurors entered the courtroom.)

10 THE COURT: Folks, good afternoon. If you will,
11 listen to the clerk, please.

12 THE CLERK: Ladies and gentlemen of the panel,
13 would you all please rise, raise your right hand and face
14 me.

15 Do you and each of you sincerely or solemnly
16 swear or affirm that you'll answer truthfully all questions
17 asked of you regarding your qualifications to serve as a
18 juror in this matter?

19 PROSPECTIVE JURORS: (Answer affirmatively.)

20 THE CLERK: Thank you. Please be.

21 THE COURT: Good afternoon. This is Part 37.
22 Before we begin, let me be sure of a few things.

23 Is there anyone who claims he or she does not
24 speak and understand English? Anybody?

25 Are you all over the age of 18?

1 PROSPECTIVE JURORS: Yes.

2 THE COURT: And are you all citizens of the
3 United States and residents of Kings County, Brooklyn?

4 PROSPECTIVE JURORS: Yes.

5 THE COURT: My name is Plummer Lott. I'm the
6 Judge who will be presiding over this trial.

7 The name of the case is the People of the State
8 of New York versus John Fuentes. This is a criminal case.
9 And among the charges is one of rape.

10 Seated to my right is Miss Gregory, an assistant
11 district attorney.

12 If you will, ma'am.

13 MS. GREGORY: Good afternoon.

14 THE COURT: It's going to be her job to present
15 this evidence on behalf of the People of the State of New
16 York. And the fact that this action is brought in the name
17 of the People or that evidence is going to be presented by
18 a public official does not in any way indicate that the
19 public wants a specific verdict. The People of this state
20 are served by whatever verdict is justified by the
21 evidence.

22 To my left is Mr. John Rodriguez.

23 MR. RODRIGUEZ: Good afternoon, ladies and
24 gentlemen.

25 THE COURT: He is the attorney for Mr. Fuentes.

1 And to his right is Mr. Fuentes.

2 THE DEFENDANT: Good afternoon, ladies and
3 gentlemen.

4 THE COURT: Now, again, this is a criminal case.
5 This trial allegedly concerns events which occurred on
6 January 27th, 2002, at approximately 4 to 5 a.m. inside 474
7 Marcy Avenue. And the defendant is alleged to have engaged
8 one Gina Colon in sexual intercourse by forcible
9 compulsion.

10 Now, please bear in mind that this is just a
11 summary of the allegations made by the People in their
12 indictment against the defendant. It does not constitute
13 evidence against the defendant, nor does it constitute the
14 Court's view of the case. Indeed, the indictment is an
15 accusation only. It has no significance in terms of the
16 guilt or non-guilt of the defendant. It's merely a written
17 accusation, nothing more than that.

18 This defendant is presumed innocent. That
19 presumption remains with him throughout the trial, unless
20 the People convince you at the end of trial of his guilt
21 beyond a reasonable doubt.

22 We have 11 jurors selected. I need one
23 additional person to complete the trial jury. And I'd like
24 to get two alternates.

25 The schedule is as follows: We will open

1 tomorrow. It will probably be a full day. We'll only work
2 until lunchtime on Friday. We'll resume Monday, it
3 probably will be a full day. And Tuesday I hope to give
4 the case to the jury. Everybody clear about the schedule?

5 Now, although this is a criminal case, you will
6 not be sequestered once the jury gets the case. In other
7 words, once you get the case, if at the end of the day you
8 have not reached your verdict you'll be allowed to separate
9 and go home and then come back the next day to resume
10 deliberations. So everybody clear about the schedule and
11 the fact that there's no sequestration?

12 I'm going to have Mr. LaRose call the names of --
13 let's try ten, Mr. LaRose, please. See if we can get the
14 people selected.

15 THE CLERK: As the Judge stated, I'm going to
16 call your name. I'm going to ask you to follow the
17 directions of the staff. When your name is called, please
18 say "here" or "present," since the parties have their back
19 to you.

20 And if anybody's name is mispronounced, I
21 apologize in advance.

22 Kenyetta Singleton, would you please take seat
23 number one. Last name is spelled S-I-N-G-L-E-T-O-N.

24 Tawanna Hill-Fowler.

25 THE COURT: Is that hyphenated, ma'am?

1 PROSPECTIVE JUROR: Yes, it is.

2 THE CLERK: That's H-I-L-L-F-O-W-L-E-R. Seat
3 number two.

4 Clifton Coward, last name C-O-W-A-R-D, seat
5 three.

6 Tamarra Veider, V-E-I-D-E-R.

7 (No response.)

8 THE COURT: Call downstairs before you mark her
9 absent.

10 Mikhailda Bilwakesh, last name is spelled
11 B-I-L-W-A-K-E-S-H, seat four.

12 Boris Broverman, last name is spelled
13 B-R-O-V-E-R-M-A-N.

14 Gwendolyn Youngblood, last name is spelled
15 Y-O-U-N-G-B-L-O-O-D, seat six.

16 Garrett Weathers, last name is spelled
17 W-E-A-T-H-E-R-S, seat seven.

18 Brenda Anthony, last name is spelled
19 A-N-T-H-O-N-Y, seat eight.

20 Kenneth Butler, last name is spelled B-U-T-L-E-R,
21 seat nine.

22 THE COURT: Mr. Butler, you came in late, is that
23 correct?

24 PROSPECTIVE JUROR #9: Yes.

25 THE COURT: I don't think he's even sworn.

1 Come on up, sir, we'll swear you while you're in
2 the box.

3 Sonia Williams-Merritt, last name is spelled
4 W-I-L-L-I-A-M-S-M-E-R-R-I-T-T.

5 Mr. Butler, stand up, please, and raise your
6 right hand.

7 Do you solemnly swear or affirm you'll answer
8 truthfully all questions asked of you regarding your
9 qualifications to serve as a juror in this matter?

10 PROSPECTIVE JUROR #9: Yes, I do.

11 THE CLERK: Thank you.

12 THE COURT: Those of you in the box and those in
13 the audience, just try to listen up. Hopefully I can get
14 the jury out of this group. If I don't, in all likelihood
15 you'll be asked the same questions.

16 The procedure here is the same procedures used
17 routinely in all criminal cases. The objective is to
18 obtain a fair and impartial jury. That's one that will
19 decide this case solely upon the evidence and my
20 instructions on the law.

21 In a moment I'm going to ask ten of you to my
22 right to respond to the questionnaire you have in your
23 hand.

24 Following my questions, the lawyers will ask you
25 questions. Their questions will be based on the answers

1 that you give, and perhaps they might, they may discuss
2 with you some of the issues they feel may arise during the
3 course of the trial that they want to get your opinion on.

4 It's important you understand that none of the
5 questions are meant to be unduly personal, not intended to
6 embarrass anybody, and we're not going to sit in judgment
7 of anything you have to say beyond the answers to the
8 questions in the questionnaire. There are no right or
9 wrong answers. A wrong answer, however, would be a
10 dishonest answer.

11 If you're asked a question that is of a personal
12 nature, that you don't want to discuss publicly, please let
13 me know and I'll allow you to answer the question
14 privately.

15 Now, folks, if selected as jurors you're not
16 going to be required to know anything about the law. I
17 will instruct you on the law not only during the course of
18 the trial, but certainly at the end of the trial.

19 A few of the things that you should know up
20 front, because undoubtedly the lawyers will ask you about
21 them, are these:

22 One, this case has been brought by indictment.
23 And please understand that the indictment is simply a
24 device used to bring someone to trial. It has no
25 evidentiary value whatsoever. And even the fact that the

1 defendant has been arrested and charged with the crime is
2 not evidence of guilt or any fact that can prove his guilt.
3 Every person accused of a crime is presumed innocent. That
4 is, he or she stands innocent in the eyes of the law. The
5 presumption remains with the defendant throughout the
6 entire trial. It continues with him through into jury
7 deliberations and can only be overcome if and when the
8 point is reached by all of you in jury deliberations that
9 the evidence convinces you beyond a reasonable doubt of his
10 guilt. If that doesn't occur, the presumption remains and
11 you must find the defendant not guilty.

12 The defendant has entered a plea of not guilty to
13 the charges contained in the indictment. A plea of not
14 guilty is a denial of each and every material allegation in
15 the indictment.

16 Under our system of laws, the People, the
17 prosecution, is required to prove the defendant's guilt
18 beyond a reasonable doubt as to each and every material
19 allegation in the indictment and any essential elements
20 required. The standard is proof beyond a reasonable doubt.
21 I'll explain in greater detail at the end of the trial what
22 it means. For the moment, it's not proof beyond all doubt
23 or proof to a mathematical certainty, just proof beyond a
24 reasonable doubt.

25 A person accused of a crime is not required to

1 testify. If that turns out to be the situation in this
2 case, you must not draw any inference adverse to the
3 defendant, nor may you raise it during jury deliberations.

4 Also, you must decide this case entirely on the
5 evidence, my instructions on the law, without any
6 consideration of what the punishment will be if a verdict
7 of guilty is found. You must also not allow sympathy you
8 feel for anyone to divert you from your duty to consider
9 the evidence fairly and impartially when deliberating upon
10 a verdict.

11 Now, as trial jurors your only function is really
12 twofold: To determine fairly and impartially from the
13 evidence whether any crime charged has been committed, and
14 if so, whether this defendant committed that crime. You're
15 not here to make a moral judgment about anybody at the end
16 of the trial. You're making a factual judgment, a factual
17 judgment about the quality of the People's evidence.
18 You're really here to determine whether the quality of the
19 People's evidence convinces you beyond a reasonable doubt
20 as to the defendant's guilt to any crime. That is the
21 judgment you're asked to make here.

22 Now, personal considerations about the nature of
23 the crime must have nothing to do with your decision in
24 this case and must not prevent you from being a fair and
25 impartial juror.

1 Now, in order to be a juror you'll have to
2 evaluate the credibility of the evidence that's offered
3 here. And by credibility of evidence I'm talking about its
4 truthfulness and accuracy. You and you alone will decide
5 really what happened here. And I'll give you the law and
6 you'll apply the law to the facts, and in that way reach a
7 verdict.

8 So, as illustrated earlier by one of the
9 questions that one of the discussions the lawyers had,
10 witnesses are going to come in, they're going to raise
11 their right hand and swear to tell the truth. There's only
12 three possibilities: The witness is telling the truth, the
13 witness is mistaken or the witness is intentionally lying.

14 Now, in judging credibility, you should use the
15 same tests you found practical and reliable in judging the
16 truth or falsity of statements made to you by others
17 outside this courtroom.

18 Now, some of the things you can consider is the
19 opportunity of the witness to see and hear the things about
20 which he or she is testifying; their memory, any motive
21 they may have to testify in a certain way; their manner
22 while testifying; whether they said something different at
23 an earlier time; the extent to which their testimony is
24 consistent with other evidence you believe.

25 So in short, when a witness comes in and

1 testifies, consider that witness' testimony carefully. Be
2 alert for anything in the witness' words, behavior on the
3 witness stand or anything else that might help you judge
4 the truthfulness and accuracy of a witness' testimony.

5 No one is entitled to be automatically believed.
6 They don't get a free pass here regardless of who they are.
7 But all witnesses are to have their credibility for
8 truthfulness and accuracy evaluated by the same standard.

9 That applies to police officers. You must
10 evaluate their credibility the same as you would the
11 credibility of any other witness and in the same manner.

12 Anybody who feels that he or she can't follow
13 those rules?

14 In the absence of any hands, then let's move.

15 I've introduced to you the attorneys and the
16 defendant. Any of these people seem familiar to you in the
17 sense you might have seen them outside this courtroom prior
18 to coming in here this morning?

19 I've told you what's alleged here. Do you think
20 you know anything at all about this case or heard anything
21 about it?

22 The area of 474 Marcy Avenue, that address,
23 anybody work or live or visit near there on a regular
24 basis?

25 That's Miss Hill-Fowler?

1 PROSPECTIVE JUROR #2: Yes.

2 THE COURT: You live in the area or work in the
3 area?

4 PROSPECTIVE JUROR #2: I live near there.

5 THE COURT: Look, a juror must decide the case on
6 the basis of evidence, not what he or she may know about
7 the area.

8 First of all, do you have any opinion about the
9 area at all?

10 PROSPECTIVE JUROR #2: No.

11 THE COURT: Now, the fact that you live near this
12 location, do you think that would affect your ability to
13 even sit on this case, ma'am?

14 PROSPECTIVE JUROR #2: Maybe.

15 THE COURT: When you say "maybe," we're not going
16 to sit in judgment. If you're saying maybe because you
17 have some doubts about your ability to be fair, just tell
18 us. Is that what it is?

19 PROSPECTIVE JUROR #2: Yes, uh-hum.

20 THE COURT: Counsels, do I have your consents?

21 MS. GREGORY: Yes.

22 MR. RODRIGUEZ: Yes.

23 THE COURT: Ma'am, thank you very much. Return
24 to Central Jury.

25 (Whereupon, Prospective Juror #2 exited the

1 courtroom.)

2 THE COURT: Victoria Carro, C-A-R-R-O.

3 Ma'am, if you will, the take seat number two,
4 please.

5 PROSPECTIVE JUROR #4: I also live in the area.

6 THE COURT: Okay. I'll get to you.

7 Since you raised your hand, same question to you.
8 You live in the area?

9 PROSPECTIVE JUROR #4: Yeah.

10 THE COURT: Now, would that affect your ability
11 to sit on this case?

12 PROSPECTIVE JUROR #4: No.

13 THE COURT: It will not. Okay.

14 Miss Carro, are you familiar with the 474 Marcy
15 Avenue?

16 PROSPECTIVE JUROR #2: No.

17 THE COURT: Do you know any of the parties, the
18 attorneys or the defendant?

19 PROSPECTIVE JUROR #2: No.

20 THE COURT: Is there any reason -- well, can you
21 follow the law as I give it to you, ma'am?

22 PROSPECTIVE JUROR #2: Yes.

23 THE COURT: Okay, all right.

24 Other than what's been alleged here, do you think
25 you know anything at all about this case?

1 PROSPECTIVE JUROR #2: No.

2 THE COURT: I'm going to give you some names. If
3 any of these names sound familiar to you, please let me
4 know: Gina Colon, Tammy Little, Police Officer Kevin
5 Fedynak, Nurse Durant, Woodhull Hospital, Nurse Dan
6 McSwiggan, Woodhull Hospital, Steven Litwin, a detective,
7 Maria Samples, Don Lewittes, Aubry Weekes.

8 Any of those names sound familiar to anybody?

9 Miss Singleton, you were here earlier. Just take
10 the questionnaire, go right down. You can just indicate,
11 you're young enough, probably don't worry about your age,
12 but over 18 is sufficient.

13 PROSPECTIVE JUROR #1: I'm 20. I'm from Bedford
14 Stuyvesant.

15 THE COURT: Keep your voice up, ma'am.

16 PROSPECTIVE JUROR #1: I'm from Bedford
17 Stuyvesant. College.

18 Unemployed. I'm engaged. I have no children.

19 THE COURT: You're engaged. Your fiance, what
20 kind of work?

21 PROSPECTIVE JUROR #1: He's a janitor.

22 THE COURT: Any areas of interest or hobbies you
23 you'd care to mention?

24 PROSPECTIVE JUROR #1: I like art.

25 THE COURT: You belong to any organizations you'd

1 care to mention?

2 PROSPECTIVE JUROR #1: No.

3 THE COURT: Favorite newspaper, at least one you
4 read more so than others?

5 PROSPECTIVE JUROR #1: Daily News.

6 THE COURT: Any friends or relatives in law
7 enforcement, ma'am?

8 PROSPECTIVE JUROR #1: No.

9 THE COURT: Any opinion about the criminal
10 justice system which would affect your ability to be fair?

11 PROSPECTIVE JUROR #1: No.

12 THE COURT: Have you ever been the victim of a
13 crime?

14 PROSPECTIVE JUROR #1: No.

15 THE COURT: As far as you know, any family member
16 or friend ever the victim of a crime?

17 PROSPECTIVE JUROR #1: No.

18 THE COURT: Ever accused of a crime?

19 PROSPECTIVE JUROR #1: No.

20 THE COURT: What about a family member or friend?

21 PROSPECTIVE JUROR #1: No.

22 THE COURT: Any prior jury service where you
23 actually sat on a jury and decided the case?

24 PROSPECTIVE JUROR #1: No.

25 THE COURT: Any reason why you could not sit on

1 this case?

2 PROSPECTIVE JUROR #1: No.

3 THE COURT: Miss Carro.

4 PROSPECTIVE JUROR #2: Victoria Carro, 24. I

5 live in East New York.

6 High school. Housewife. Married.

7 THE COURT: Your husband, what does he do, ma'am?

8 PROSPECTIVE JUROR #2: He's a driver.

9 I have three kids, all under 18.

10 Watch TV, listen to music.

11 THE COURT: What sort of television programs do

12 you watch?

13 PROSPECTIVE JUROR #2: "The Practice," the talk

14 shows.

15 THE COURT: You don't like "All My Children"?

16 PROSPECTIVE JUROR #2: No.

17 THE COURT: "General Hospital"?

18 PROSPECTIVE JUROR #2: No.

19 THE COURT: You don't? You don't even tape them?

20 Okay.

21 They're very popular. Somebody's got to be

22 watching them other than me.

23 Go ahead.

24 PROSPECTIVE JUROR #2: No organizations. Don't

25 read the newspaper.

1 THE COURT: How do you get your news then?

2 Through television?

3 PROSPECTIVE JUROR #2: Yeah.

4 THE COURT: Okay. Any friends or relatives in
5 law enforcement?

6 PROSPECTIVE JUROR #2: No.

7 THE COURT: None?

8 PROSPECTIVE JUROR #2: No.

9 THE COURT: Any opinion about the criminal
10 justice system which would affect your ability to be fair?

11 PROSPECTIVE JUROR #2: No.

12 THE COURT: Were you ever the victim of a crime?

13 PROSPECTIVE JUROR #2: No.

14 THE COURT: Any family member or friend the
15 victim of a crime?

16 PROSPECTIVE JUROR #2: No.

17 THE COURT: Ever accused of a crime?

18 PROSPECTIVE JUROR #2: No.

19 THE COURT: What about a family member or friend?

20 PROSPECTIVE JUROR #2: No.

21 THE COURT: Any prior jury service where you
22 actually sat on a jury?

23 PROSPECTIVE JUROR #2: No.

24 THE COURT: Is there any reason why you could not
25 sit here?

1 PROSPECTIVE JUROR #2: No.

2 THE COURT: Thank you very much:

3 Mr. Coward.

4 PROSPECTIVE JUROR #3: Clifton Coward. I'm 55
5 years old. I live in Brooklyn, Canarsie.

6 My education is twelfth grade. I'm an elevator
7 operator. I'm a divorcee. I have one kid, he's 29.

8 And I love fishing.

9 I don't belong to no organizations.

10 And I read the newspaper, The Post.

11 THE COURT: Any friends or relatives in law
12 enforcement?

13 PROSPECTIVE JUROR #3: No.

14 THE COURT: Any opinion about the criminal
15 justice system which would affect your ability to be fair?

16 PROSPECTIVE JUROR #3: No.

17 THE COURT: Were you ever the victim of a crime?

18 PROSPECTIVE JUROR #3: No.

19 THE COURT: Any family member or friend ever the
20 victim of a crime?

21 PROSPECTIVE JUROR #3: No.

22 THE COURT: Ever accused of a crime?

23 PROSPECTIVE JUROR #3: No.

24 THE COURT: As far as you know, any family member
25 or friend ever accused?

1 PROSPECTIVE JUROR #3: No.

2 THE COURT: Any prior jury experience in terms of
3 actually sitting on a jury or grand jury?

4 PROSPECTIVE JUROR #3: Well, I sat on two juries
5 before.

6 THE COURT: Criminal or civil?

7 PROSPECTIVE JUROR #3: Criminal.

8 THE COURT: How long ago are we talking about,
9 the last time?

10 PROSPECTIVE JUROR #3: About maybe ten, 12 years
11 ago.

12 THE COURT: Do you remember what the charge was?

13 PROSPECTIVE JUROR #3: Yeah.

14 THE COURT: What was it?

15 PROSPECTIVE JUROR #3: Well, I was on one case,
16 it was like a rape, and I was on for an attempted robbery.

17 THE COURT: Now, the rape case, were you one of
18 the first twelve or were you an alternate juror?

19 PROSPECTIVE JUROR #3: I think I was the foreman
20 of the jury.

21 THE COURT: Did the jury deliberate?

22 PROSPECTIVE JUROR #3: Yes, we did.

23 THE COURT: Was a verdict reached?

24 PROSPECTIVE JUROR #3: Yes.

25 THE COURT: What was the verdict?

1 PROSPECTIVE JUROR #3: Not guilty.

2 THE COURT: And the second case?

3 PROSPECTIVE JUROR #3: Well, it was guilty.

4 THE COURT: Now, was this over at 120

5 Schermerhorn or 360?

6 PROSPECTIVE JUROR #3: It was at the old

7 building, down towards Schermerhorn.

8 THE COURT: Were you the foreman on both cases or
9 just one case?

10 PROSPECTIVE JUROR #3: Just one case.

11 THE COURT: Anything about your experience on
12 those cases that would affect your ability to sit on this
13 case?

14 PROSPECTIVE JUROR #3: No.

15 THE COURT: Is there any reason, any reason why
16 up could not sit on this case?

17 PROSPECTIVE JUROR #3: No, there's not.

18 THE COURT: Next.

19 PROSPECTIVE JUROR #4: Mikhailda Bilwakesh, 28
20 years old. I live in Bedford Stuyvesant.

21 I'm pursuing a graduate degree. I teach English
22 at a college.

23 I'm single. I have no children.

24 No hobbies. No organizations.

25 I read all the newspapers.

Voir Dire

293

1 THE COURT: Any friends or relatives in law
2 enforcement?

3 PROSPECTIVE JUROR #4: No.

4 THE COURT: Any opinion about the criminal
5 justice system which would affect your ability to be fair?

6 PROSPECTIVE JUROR #4: No.

7 THE COURT: Ever the victim of a crime?

8 PROSPECTIVE JUROR #4: No.

9 THE COURT: As far as you know, any family member
10 or friend ever the victim of a crime?

11 PROSPECTIVE JUROR #4: No.

12 THE COURT: Ever accused of a crime?

13 PROSPECTIVE JUROR #4: Yes.

14 THE COURT: You?

15 PROSPECTIVE JUROR #4: Yes.

16 THE COURT: We'll take that one privately.

17 Have you ever served where you actually sat on a
18 jury before?

19 PROSPECTIVE JUROR #4: No.

20 THE COURT: Any reason why you couldn't sit?

21 PROSPECTIVE JUROR #4: No.

22 THE COURT: Thank you, sir.

23 Mr. Broverman, if you will, please.

24 PROSPECTIVE JUROR #5: Boris Broverman. I'm 24
25 years old. I live in Sheepshead Bay, Brooklyn.

KL

1 Educational background, Brooklyn College.
2 Computer science degree, Bachelor of Science. Occupation is
3 computer consultant.

4 I'm engaged. And my fiancée is in finance. I
5 have no children.

6 I like to go to the gym, watch movies and play
7 video games.

8 I belong to no organizations.

9 And I read The Daily News.

10 THE COURT: Any friends or relatives in law
11 enforcement?

12 PROSPECTIVE JUROR #5: No.

13 THE COURT: Any opinion about the criminal
14 justice system which would affect your ability to be fair?

15 PROSPECTIVE JUROR #5: No.

16 THE COURT: Have you, a family member or friend
17 ever been the victim of a crime?

18 PROSPECTIVE JUROR #5: No.

19 THE COURT: Ever been accused of a crime?

20 PROSPECTIVE JUROR #5: No.

21 THE COURT: As far as you know, any family member
22 or friend ever been accused?

23 PROSPECTIVE JUROR #5: No.

24 THE COURT: Any prior jury service in terms of
25 you actually sitting on the jury?

1 PROSPECTIVE JUROR #5: No. This is the first
2 time.

3 THE COURT: Any reason why you could not sit
4 here?

5 PROSPECTIVE JUROR #5: No.

6 THE COURT: Thank you, sir.

7 Miss Youngblood.

8 PROSPECTIVE JUROR #6: Gwendolyn Youngblood. Over
9 20. Flatbush.

10 Bachelor's degree. Divorced. Sixteen-year-old
11 daughter.

12 Areas of interest, boxing, traveling and reading.

13 No organizations.

14 All newspapers.

15 THE COURT: Any friends or relatives in law
16 enforcement?

17 PROSPECTIVE JUROR #6: My sister is school
18 safety. If that counts?

19 THE COURT: Do you think that will affect your
20 ability to be fair?

21 PROSPECTIVE JUROR #6: No.

22 THE COURT: Any opinion about the criminal
23 justice system which would affect your ability to be fair?

24 PROSPECTIVE JUROR #6: No.

25 THE COURT: Were you, a family member or friend

1 ever the victim of a crime?

2 PROSPECTIVE JUROR #6: Yes.

3 THE COURT: Who are we talking about?

4 PROSPECTIVE JUROR #6: Me.

5 THE COURT: Are you able to talk about it
6 publicly?

7 PROSPECTIVE JUROR #6: Yes.

8 THE COURT: What happened?

9 PROSPECTIVE JUROR #6: I was robbed at a train
10 station.

11 THE COURT: How long ago are we talking about?

12 PROSPECTIVE JUROR #6: Four years ago.

13 THE COURT: Were you physically injured during
14 the course of the robbery?

15 PROSPECTIVE JUROR #6: No.

16 THE COURT: Was that reported to the police?

17 PROSPECTIVE JUROR #6: Yes and no.

18 THE COURT: Okay. Well --

19 PROSPECTIVE JUROR #6: It was reported. They
20 took too long to come, so I left.

21 THE COURT: Do you think, what happened to you at
22 the train station, would that affect your ability to sit on
23 a criminal case?

24 PROSPECTIVE JUROR #6: No.

25 THE COURT: Any family member or friend ever the

1 victim of a crime?

2 PROSPECTIVE JUROR #6: No.

3 THE COURT: Ever accused of a crime?

4 PROSPECTIVE JUROR #6: No.

5 THE COURT: As far as you know, any family member
6 or friend ever accused?

7 PROSPECTIVE JUROR #6: I have a sister that
8 served time. I don't know what for, though.

9 THE COURT: Can you talk about it publicly or
10 want to do it privately?

11 PROSPECTIVE JUROR #6: I don't know.

12 THE COURT: You don't know what it's for?

13 PROSPECTIVE JUROR #6: No.

14 THE COURT: Just know you have a relative who may
15 have done some time?

16 PROSPECTIVE JUROR #6: Yes.

17 THE COURT: Let me ask you this: Do you think
18 that circumstance would affect your ability to sit on a
19 criminal case?

20 PROSPECTIVE JUROR #6: No.

21 THE COURT: You could be fair to both sides?

22 PROSPECTIVE JUROR #6: Yes.

23 THE COURT: Any prior jury service, ma'am?

24 PROSPECTIVE JUROR #6: No.

25 THE COURT: Your first time?

1 PROSPECTIVE JUROR #6: Yes.

2 THE COURT: Okay. Is there any reason why you
3 couldn't sit here?

4 PROSPECTIVE JUROR #6: No.

5 THE COURT: Thank you very much.

6 THE COURT: Miss Williams-Merritt, if you will,
7 please.

8 PROSPECTIVE JUROR #10: Sonia Williams-Merritt.
9 I'm 44. I live in East Flatbush.

10 I'm pursuing my second masters. I'm a teacher.
11 I'm married.

12 THE COURT: Your husband, what does he do, ma'am?

13 PROSPECTIVE JUROR #10: He's a mechanic.

14 I take care of my niece and nephew. I like to do
15 crosswords and I like to cook and travel.

16 I read The Daily News.

17 I have no friends or relatives in law
18 enforcement.

19 THE COURT: Any opinion about the criminal
20 justice system which would affect your ability to be fair?

21 PROSPECTIVE JUROR #10: None.

22 THE COURT: Ever the victim of a crime?

23 PROSPECTIVE JUROR #10: Yes.

24 THE COURT: Are you able to talk about it
25 publicly?

1 PROSPECTIVE JUROR #10: I was assaulted by my
2 niece's mother.

3 THE COURT: How long ago are we talking about?

4 PROSPECTIVE JUROR #10: A year or so.

5 THE COURT: Were the police called?

6 PROSPECTIVE JUROR #10: Yes, they were called.

7 THE COURT: Was there an arrest of some sort?

8 PROSPECTIVE JUROR #10: Yes, there was.

9 THE COURT: Was there a prosecution?

10 PROSPECTIVE JUROR #10: I think so.

11 THE COURT: Did you have to testify as a witness?

12 PROSPECTIVE JUROR #10: No.

13 THE COURT: Anything about that experience which
14 would affect your ability to sit as a juror in this case?

15 PROSPECTIVE JUROR #10: Not that experience. But
16 I'm a special education teacher and my area is EH.

17 THE COURT: Then I'll tell you what, I'll make a
18 note of it and we'll talk to you privately about that. And
19 we'll go on to Mr. Butler.

20 Mr. Butler, if you will, please.

21 PROSPECTIVE JUROR #9: Kenneth Butler, 41. East
22 New York.

23 High school. Couple of college credits.

24 I work for Transit Authority. I work on buses.

25 Married. Wife is a bus operator. I have one son, 12.

1 Interests are computers.

2 No organizations.

3 All newspapers.

4 THE COURT: Any friends or relatives in law
5 enforcement?

6 PROSPECTIVE JUROR #9: Brothers and friends.
7 Brother a sergeant in Bridge and Tunnels.

8 THE COURT: Do you think that relationship would
9 affect your ability to be fair?

10 PROSPECTIVE JUROR #9: No.

11 THE COURT: Any opinion about the criminal
12 justice system which would affect your ability to be fair?

13 PROSPECTIVE JUROR #9: No.

14 THE COURT: Were you ever the victim of a crime?

15 PROSPECTIVE JUROR #9: No.

16 THE COURT: Any family member or friend, as far
17 as you know, ever the victim of a crime?

18 PROSPECTIVE JUROR #9: No.

19 THE COURT: Ever accused of a crime?

20 PROSPECTIVE JUROR #9: Yes.

21 THE COURT: You?

22 PROSPECTIVE JUROR #9: Yes.

23 THE COURT: We'll take that one privately.

24 Any prior jury service where you actually sat as
25 a juror?

Voir Dire

301

1 PROSPECTIVE JUROR #9: Yes.

2 THE COURT: What kind of case was it?

3 PROSPECTIVE JUROR #9: That was attempted murder.

4 THE COURT: How long ago was that?

5 PROSPECTIVE JUROR #9: Approximately five years.

6 THE COURT: Were you one of the first 12 or were
7 you an alternate juror?

8 PROSPECTIVE JUROR #9: First twelve.

9 THE COURT: Did the jury deliberate?

10 PROSPECTIVE JUROR #9: Yes.

11 THE COURT: Okay. And ultimately was a verdict
12 reached?

13 PROSPECTIVE JUROR #9: Yes.

14 THE COURT: What was the verdict?

15 PROSPECTIVE JUROR #9: Guilty.

16 THE COURT: Anything about your service on that
17 case that would affect your ability to sit on this case?

18 PROSPECTIVE JUROR #9: No.

19 THE COURT: Is there any reason why you couldn't
20 sit on this case?

21 PROSPECTIVE JUROR #9: No.

22 THE COURT: Thank you, sir.

23 Miss Anthony, if you will, please.

24 PROSPECTIVE JUROR #8: Brenda Anthony. I'm 52
25 years old. I live in Flatbush.

KL

1 Presently I'm working on my second masters in
2 science. I'm a teacher. I'm a divorcee. I have two sons,
3 28 and 19.

4 My interests is soap operas.

5 THE COURT: Well, too bad. If we had some time,
6 I'd talk to you about them.

7 PROSPECTIVE JUROR #8: Young and the Restless.

8 THE COURT: Yes, ma'am.

9 PROSPECTIVE JUROR #8: I like reading The New
10 York Times.

11 THE COURT: Any friends or relatives in law
12 enforcement?

13 PROSPECTIVE JUROR #8: No.

14 THE COURT: Any opinion about the criminal
15 justice system which would affect your ability to be fair?

16 PROSPECTIVE JUROR #8: No.

17 THE COURT: Were you, a family member or friend
18 ever the victim of a crime?

19 PROSPECTIVE JUROR #8: No.

20 THE COURT: Ever accused of a crime?

21 PROSPECTIVE JUROR #8: No.

22 THE COURT: As far as you know, any family member
23 or friend ever accused?

24 PROSPECTIVE JUROR #8: My ex-. He was charged
25 and found guilty for tax evasion.

1 THE COURT: Okay. All right. He didn't serve
2 any time for that, did he?

3 PROSPECTIVE JUROR #8: He did serve some time.

4 THE COURT: How much?

5 PROSPECTIVE JUROR #8: A year.

6 THE COURT: And he had to pay a fine also?

7 PROSPECTIVE JUROR #8: No, he didn't. I don't
8 think he paid a fine, because I --

9 THE COURT: Let me ask you this: Do you think
10 that circumstance, would it affect your ability to sit on a
11 criminal case?

12 PROSPECTIVE JUROR #8: No.

13 THE COURT: Okay. All right. Have you ever sat
14 on a jury before?

15 PROSPECTIVE JUROR #8: Yes. Five years ago.

16 THE COURT: What kind of case?

17 PROSPECTIVE JUROR #8: It was an assault.

18 THE COURT: Were you one of the first 12 or were
19 you an alternate juror?

20 PROSPECTIVE JUROR #8: First twelve.

21 THE COURT: Did you deliberate?

22 PROSPECTIVE JUROR #8: Yes.

23 THE COURT: Was a verdict reached?

24 PROSPECTIVE JUROR #8: Yes.

25 THE COURT: What was the verdict?

1 PROSPECTIVE JUROR #8: Guilty.

2 THE COURT: Anything about your service on that
3 case that would affect your ability to sit on this case?

4 PROSPECTIVE JUROR #8: No.

5 THE COURT: Any reason why you couldn't sit?

6 PROSPECTIVE JUROR #8: No.

7 THE COURT: Thank you very much.

8 Mr. Weathers, is that correct?

9 PROSPECTIVE JUROR #7: Yes. Garrett Weathers,
10 50. Live in Flatbush.

11 Degree in electrical technology.

12 Systems engineer.

13 Separated. I have a son, 20, a daughter ten.

14 No hobbies or interests at the current time.

15 No organizations.

16 Various newspapers.

17 THE COURT: Any friends or relatives in law
18 enforcement?

19 PROSPECTIVE JUROR #7: Yes, I do. I have a niece
20 and nephew.

21 THE COURT: What are they, judges? Lawyers?
22 Police officers?

23 PROSPECTIVE JUROR #7: Police officers and
24 correction officers.

25 THE COURT: Do you think those relationships

1 would affect your ability to be fair?

2 PROSPECTIVE JUROR #7: No.

3 THE COURT: Any opinion about the criminal
4 justice system which would affect your ability to be fair?

5 PROSPECTIVE JUROR #7: No.

6 THE COURT: Were you, a family member or friend
7 ever the victim of a crime?

8 PROSPECTIVE JUROR #7: No.

9 THE COURT: Ever accused of a crime?

10 PROSPECTIVE JUROR #7: No.

11 THE COURT: Any family member or friend, as far
12 as you know, ever accused?

13 PROSPECTIVE JUROR #7: No.

14 THE COURT: Any prior jury service where you
15 actually sat?

16 PROSPECTIVE JUROR #7: No.

17 THE COURT: Any reason why you can't sit on this
18 case?

19 PROSPECTIVE JUROR #7: No.

20 THE COURT: Thank you.

21 Folks, I'm going to need you to step outside. I
22 have to speak to at least two of these jurors individually.
23 I'll have you back in a moment.

24 Don't discuss the case or any aspect of it.

25 Miss Williams-Merritt, if you'll just remain

1 behind.

2 (Whereupon, all prospective jurors exited the
3 courtroom with the exception of Prospective Juror #10.)

4 THE COURT: Just give us your name again for the
5 record, please.

6 PROSPECTIVE JUROR #10: Sonia Williams-Merritt.

7 THE COURT: You had indicated at some point that
8 because of your work there might be a reason why you can't
9 sit?

10 PROSPECTIVE JUROR #10: Yes. I teach kids and I
11 supervise kids and I work in a self-contained special
12 education building and I work with preteens, teenagers, and
13 I've come across a lot of -- and they're EH, emotionally
14 handicapped, and they have a lot of issues. And sometimes
15 you get personal, it becomes personal and you get attached.
16 So I do not want that to carry over into this case.

17 THE COURT: Okay. Now, I'm going to put words in
18 your mouth, but I guess what you're telling me is if you
19 were a juror on this case it might happen?

20 PROSPECTIVE JUROR #10: It may.

21 THE COURT: All right.

22 PROSPECTIVE JUROR #10: Because that's the nature
23 of my job.

24 THE COURT: Yes, ma'am.

25 Counsel, given that, are you asking to pursue

1 this any further?

2 MS. GREGORY: No, your Honor.

3 THE COURT: People? Defense?

4 MR. RODRIGUEZ: No, your Honor.

5 THE COURT: Thank you very much.

6 PROSPECTIVE JUROR #10: Thank you, Judge.

7 THE COURT: Just leave the questionnaire on the
8 chair.

9 PROSPECTIVE JUROR #10: Okay.

10 THE COURT: Mr. Butler when she leaves.

11 (Whereupon, Prospective Juror #10, having been
12 excused from service, exited the courtroom and Prospective
13 Juror #9 entered the courtroom.)

14 THE COURT: The front row will be fine, Mr.
15 Butler.

16 And just give us your name again.

17 PROSPECTIVE JUROR #9: Kenneth Butler.

18 THE COURT: Someone had been accused of a crime
19 or something like that?

20 PROSPECTIVE JUROR #9: Yes. In 1986 I was in
21 Manhattan with some friends of mine buying a Walkman. Once
22 we established the transaction, I paid for the Walkman. A
23 friend of mine said he could get it for less. I asked for
24 my money back and there was a dispute over that and the
25 store owner had refused to give me back the money. My

1 friends got irate. He pressed the button, the police came
2 and he said that we were trying to rob the store.

3 And so after that we, you know, after we claimed
4 it wasn't happening, even the police didn't believe that.
5 They said "we have to search you," because he made a claim,
6 and found a gun on one of my partners that even we didn't
7 know he had.

8 Thankfully my uncle was a homicide detective and
9 got me out of that one once it was established what really
10 happened, it was a dispute over the Walkman itself; had
11 nothing to do with a robbery. After that the individual
12 with the gun, he was the one that was charged.

13 THE COURT: When you were arrested did you have
14 to spend any time in jail?

15 PROSPECTIVE JUROR #9: No -- well, yeah. I had
16 to sit in the cell, yeah.

17 THE COURT: And then they resolved it before you
18 went before a judge?

19 PROSPECTIVE JUROR #9: Oh, yeah. No judge, no
20 fingerprinting.

21 THE COURT: All right. Anything about that
22 experience that would affect your ability to sit on this
23 case at all?

24 PROSPECTIVE JUROR #9: No.

25 THE COURT: You can be fair to both sides

1 notwithstanding the fact that --

2 PROSPECTIVE JUROR #9: No, I understand the
3 rules, if you explain them to me well enough. If I don't
4 understand, I will ask.

5 THE COURT: Okay. That's good. I appreciate
6 that, sir.

7 All right. Miss Gregory, any questions?

8 MS. GREGORY: No, thank you.

9 THE COURT: Mr. Rodriguez, any questions?

10 MR. RODRIGUEZ: No.

11 THE COURT: Just step outside, please, sir.

12 (Whereupon, Prospective Juror #9 exited the
13 courtroom.)

14 THE COURT: I'll need Mr. Bilwakesh. He's number
15 four.

16 (Whereupon, Prospective Juror #4 entered the
17 courtroom.)

18 THE COURT: Just have a seat. And give us your
19 name again, please.

20 PROSPECTIVE JUROR #4: Mikhailda Bilwakesh.

21 THE COURT: I believe I left it with someone
22 having been accused of a crime. Was that you?

23 PROSPECTIVE JUROR #4: Yes.

24 THE COURT: How long ago? And what are we
25 talking about?

1 PROSPECTIVE JUROR #4: 1997 I was arrested.
2 There's no findings. The charges were all dropped.

3 THE COURT: What were you arrested for?

4 PROSPECTIVE JUROR #4: Small amount of drug
5 possession.

6 THE COURT: Marijuana or --

7 PROSPECTIVE JUROR #4: LSD.

8 THE COURT: Okay. And where did this happen,
9 Manhattan or what?

10 PROSPECTIVE JUROR #4: Massachusetts.

11 THE COURT: Did you spend any time in jail?

12 PROSPECTIVE JUROR #4: No.

13 THE COURT: How did you come to get arrested?
14 Were you walking on the street or was this a --

15 PROSPECTIVE JUROR #4: No. I was in a car. They
16 pulled me over. I was driving. The other person in the
17 car made a fuss about something, and then the officer
18 arrested me, unfortunately, and then in my pocket I had
19 small trace, they said a small trace of LSD.

20 THE COURT: Anything about that experience that
21 would affect your ability to be fair and impartial to
22 either side here?

23 PROSPECTIVE JUROR #4: No.

24 THE COURT: People, any questions?

25 MS. GREGORY: No.

1 THE COURT: Defense, any questions?

2 MR. RODRIGUEZ: No, thanks.

3 THE COURT: Just step outside, sir.

4 PROSPECTIVE JUROR #4: Okay.

5 (Whereupon, Prospective Juror #4 exited the
6 courtroom.)

7 THE COURT: Is there anybody else either side
8 wants to speak to?

9 MR. RODRIGUEZ: I don't think so, your Honor. I
10 would just like to use the rest room.

11 THE COURT: Yes, sir.

12 MR. RODRIGUEZ: Thank you.

13 (Brief pause in proceedings, after which the
14 trial continued as follows:)

15 THE COURT: All right, let's gets those jurors in
16 the box in first and then the rest of the jurors in the
17 audience.

18 (Whereupon, the prospective jurors entered the
19 courtroom.)

20 THE COURT: All right. The lawyers are now going
21 to ask questions of you. Please be candid and open with
22 them.

23 If you don't understand the question, ask them to
24 repeat it. Just don't answer the question to get rid of
25 them. They need to know how you feel.

1 Miss Gregory.

2 MS. GREGORY: Thank you, your Honor.

3 Good afternoon, ladies and gentlemen. My name is
4 Miss Gregory. I'm an Assistant DA. I'm the prosecutor in
5 this case. Right now is the chance that we, Mr. Rodriguez
6 and I, can speak to you during this jury selection. And
7 after, if you're picked for this jury, we won't be able to
8 speak to you anymore directly like this. So if there's
9 anything that you've heard or any question gets raised
10 during questions that are asked of you or another one of
11 the potential jurors, please let us know. You can raise
12 your hand, if you have a response or a certain feeling
13 about that.

14 The Judge indicated that, you know, there are
15 going to be witnesses in this case and this case does
16 involve a sexual assault. And the witnesses are going to
17 come and the complainant in this case is going to come and
18 take the stand. And when she responds to the questions
19 that are asked of her, any of the witnesses when they
20 respond to the questions, that, what they say, is
21 testimony, and that's evidence. Does everyone understand
22 that?

23 PROSPECTIVE JURORS: Yes.

24 MS. GREGORY: Miss Singleton, the Judge had asked
25 before if everybody here thought they would be able to

1 follow the laws of the Court and -- the rules of Court and
2 the laws of the state as far as being a juror is concerned.
3 And you answered that you could.

4 PROSPECTIVE JUROR #1: Yes.

5 MS. GREGORY: One of those rules is that if you
6 were selected as a juror in any case, say whether it be
7 this case or another case, and you only heard from one
8 witness, and that one witness came and took the stand and
9 answered the questions that were put to them by both
10 lawyers, and you found that person credible, our law says
11 that if you believe that person beyond a reasonable doubt
12 that you could then find the defendant guilty.

13 PROSPECTIVE JUROR #1: Yes.

14 MS. GREGORY: There are some people, and I'm
15 not -- this is what I'm inquiring about -- that would say,
16 you know, "I can't follow that law, whether it be my
17 background or my religion. I'm going to need more than
18 that one person." Would you be able to follow the law?

19 PROSPECTIVE JUROR #1: Yes.

20 MS. GREGORY: Is there anybody here that would
21 say "I understand that's the law, but for whatever reason I
22 would need more than just that one person"? Anybody that
23 feels that way? Okay.

24 Miss Carro, how are you?

25 PROSPECTIVE JUROR #2: Good, thanks.

1 MS. GREGORY: Have you heard just maybe in the
2 news or television about DNA being used to solve cases?

3 PROSPECTIVE JUROR #2: Yes.

4 MS. GREGORY: And DNA involves science. And it
5 seems like it's something that's a somewhat complicated
6 process that's done to do that.

7 PROSPECTIVE JUROR #2: Uh-hum.

8 MS. GREGORY: If you're selected in this case as
9 a juror, there will be some DNA evidence. Would you be
10 able to keep an open ear to that and listen to it, even
11 though, I mean, now you haven't heard anything, but it
12 seems like that's something that may be complicated, would
13 you be willing to do that?

14 PROSPECTIVE JUROR #2: Yes.

15 MS. GREGORY: Is there anybody here that feels
16 like, you know, "all right, that's just too scientific and
17 it's just something that I'm not going to get from the
18 start," and wouldn't be able to give it a fair shake?
19 Anybody that feels that way? No? Okay.

20 Mr. Weathers, how are you?

21 PROSPECTIVE JUROR #7: Fine.

22 MS. GREGORY: What I wanted to address with you,
23 as well as the others, is do you imagine that a person, any
24 person, that's the victim of a crime, would have a certain,
25 would you expect them to act in just a certain way?

1 PROSPECTIVE JUROR #7: No. People act
2 differently.

3 MS. GREGORY: Okay. And if you were selected as
4 a juror in this case and you heard from the witness and you
5 found, you know, "that's not the way that I would have
6 reacted," would you immediately discredit the witness?

7 PROSPECTIVE JUROR #7: No, not at all.

8 MS. GREGORY: What about you, Miss Anthony?

9 PROSPECTIVE JUROR #8: No, I wouldn't.

10 MS. GREGORY: So is it fair to say that people
11 react differently to stress or violence?

12 PROSPECTIVE JURORS: Yes.

13 MS. GREGORY: Mr. Butler?

14 PROSPECTIVE JUROR #9: Yes.

15 MS. GREGORY: How are you?

16 PROSPECTIVE JUROR #9: All right.

17 MS. GREGORY: The incident, as the Judge
18 indicated, in this case happened in 2002.

19 PROSPECTIVE JUROR #9: Okay.

20 MS. GREGORY: So a little over three years ago.

21 PROSPECTIVE JUROR #9: Yes.

22 MS. GREGORY: And the main witness in the case
23 will obviously be testifying about things that happened to
24 her back then.

25 PROSPECTIVE JUROR #9: Right.

1 MS. GREGORY: And some of the other witnesses as
2 well. Would you expect someone when they're talking about
3 an incident to -- and not just, you know, what was the
4 weather like, but something important, would you expect
5 that they would tell their account of the incident the
6 exact same way that they did some years ago?

7 PROSPECTIVE JUROR #9: Are we talking about the
8 person itself, the victim itself?

9 MS. GREGORY: Yeah.

10 PROSPECTIVE JUROR #9: Yeah.

11 MS. GREGORY: Now, if the person came in some
12 years later and they gave -- they were consistent, but they
13 didn't use maybe the exact same words that they used to
14 describe the incident, would you automatically discredit
15 them?

16 PROSPECTIVE JUROR #9: No. As long as it was
17 close.

18 MS. GREGORY: So if there is some consistency to
19 what they're saying and if you believe what they're saying,
20 you could believe them?

21 PROSPECTIVE JUROR #9: If that tragic situation
22 happened to them, I know that they would not be able to
23 give a direct account, so, yes, it could be altered.

24 MS. GREGORY: So what I'm asking is that so you
25 wouldn't automatically discredit somebody if they didn't

1 use the identical words that they used years ago?

2 PROSPECTIVE JUROR #9: No.

3 MS. GREGORY: Does anybody feel differently about
4 that?

5 Miss Youngblood, how are you?

6 PROSPECTIVE JUROR #6: Okay.

7 MS. GREGORY: Do you expect that a person who is
8 the victim of a violent act would, coming into a courtroom,
9 do you expect they would testify in a certain way? They
10 would be emotional or might cry?

11 PROSPECTIVE JUROR #6: I suppose they might.

12 MS. GREGORY: Could you imagine a circumstance
13 where they might not?

14 PROSPECTIVE JUROR #6: Yeah.

15 MS. GREGORY: So let's say a person came in and
16 they were testifying about something terrible that had
17 happened to them and they didn't cry, would you discredit
18 what they had to say just because they didn't cry?

19 MR. RODRIGUEZ: Objection, your Honor.

20 THE COURT: You're asking her how she values it?

21 MISS GREGORY: I was asking her would she
22 discredit the testimony.

23 THE COURT: That's what I'm saying. That's
24 ultimately her call. What I'm simply saying is this: The
25 manner in which the witness gives his or her testimony is

1 ultimately a decision that you've got to make and figure
2 out how it factors into whether you believe that witness or
3 not. I mean, you can accept the notion that people don't
4 react the same way, Okay, and it's conceivable that a
5 witness could come in and cry and it's conceivable that
6 they couldn't. But ultimately the call of whether that
7 witness is true or not is yours, based on your life's
8 experience.

9 I think they get the idea.

10 MS. GREGORY: Okay, thank you.

11 Mr. Broverman, hi. Good afternoon. If you were
12 selected as a juror in this case, could you assure us that
13 once you'd heard all the evidence, and if you found the
14 evidence credible, that you'd be able to find the defendant
15 guilty?

16 PROSPECTIVE JUROR #5: Yes.

17 MS. GREGORY: And you'd be able to put any
18 sympathy that you had, either for the complainant in this
19 case or the defendant, aside?

20 PROSPECTIVE JUROR #5: Yes.

21 MS. GREGORY: And what about you, Mr. Bilwakesh,
22 would you be able to do that too?

23 PROSPECTIVE JUROR #4: Yes.

24 MS. GREGORY: And everyone else?

25 PROSPECTIVE JURORS: Yes.

1 MS. GREGORY: Thank you all very much.

2 THE COURT: All right, Mr. Rodriguez.

3 MR. RODRIGUEZ: Thank you.

4 I know it's getting late in the day.

5 Good afternoon. My name is John Rodriguez. I
6 don't want to belabor you too much, but there's some points
7 I need to ask you.

8 I don't know everybody's name. Do you mind if I
9 just point at you and ask you? I know it's polite to get
10 names, but this comes across better.

11 How are you doing?

12 PROSPECTIVE JUROR #1: Okay.

13 MR. RODRIGUEZ: The Judge is going to tell you
14 the law, what the law is. You're going to be asked to
15 accept the law. One of the things that the Judge is going
16 to tell you is that my client is presumed to be innocent.
17 Now, that means that he's not guilty of anything.

18 PROSPECTIVE JUROR #1: Yes.

19 MR. RODRIGUEZ: Even though he's charged and
20 we're in a courtroom here, he sits there and, you know, no
21 one else sits there, but he's presumed innocent.

22 PROSPECTIVE JUROR #1: Yes.

23 MR. RODRIGUEZ: Do you agree with that?

24 PROSPECTIVE JUROR #1: Yes.

25 MR. RODRIGUEZ: Can we all accept that?

1 And the only way he's not innocent is if the jury
2 says he's not innocent.

3 Now, you all understand how that comes about,
4 right? Someone takes the stand. Now, that person will
5 come up there, and as the Judge said, raise their hand to
6 tell the truth, the whole truth and nothing but the truth.

7 But the fact that someone stands up there and
8 points a finger doesn't mean they're being truthful.

9 PROSPECTIVE JUROR #1: Yes.

10 MR. RODRIGUEZ: Does it automatically mean
11 they're being truthful?

12 PROSPECTIVE JUROR #9: I didn't hear you.

13 MR. RODRIGUEZ: The fact that somebody said you
14 did something, does that make it truthful?

15 PROSPECTIVE JUROR #9: No.

16 MR. RODRIGUEZ: Even though they swear to tell
17 the truth?

18 PROSPECTIVE JUROR #9: No.

19 MR. RODRIGUEZ: They could be making a false
20 statement?

21 PROSPECTIVE JUROR #9: Could be.

22 MR. RODRIGUEZ: In fact, many times people are
23 accused wrongly, would you agree with that?

24 PROSPECTIVE JUROR #6: Yes.

25 MR. RODRIGUEZ: Would you agree with that?

1 PROSPECTIVE JUROR #5: Yes.

2 MR. RODRIGUEZ: And when someone takes the stand,
3 we all understand and recognize, ma'am, right, that you're
4 not going to have a book you can open up or crystal ball
5 that could take you back to see what happened? You have to
6 listen to the testimony and whatever other statements are
7 made or whatever evidence is made and make a determination.

8 PROSPECTIVE JUROR #6: Yes.

9 MR. RODRIGUEZ: And one of the things that I
10 think everyone agreed with and you agreed with is that
11 someone's emotional state on the stand doesn't necessarily
12 mean that you're going to accept -- rather let me re-word
13 that.

14 You may see someone take the stand and they may
15 or may not be emotional. And the fact that they're not
16 emotional doesn't mean that they're not being honest,
17 right?

18 PROSPECTIVE JUROR #6: Yes.

19 MR. RODRIGUEZ: Can you also accept the fact that
20 somebody is boo-hooing up there, "oh, God, Lord," doesn't
21 mean that they're telling the truth either?

22 PROSPECTIVE JUROR #6: Right.

23 THE COURT: If that occurs, I assure you the jury
24 will be sent out and I will instruct them accordingly.

25 You're not allowed to have emotion affect your

1 decision. It's not going to happen.

2 MR. RODRIGUEZ: Okay. I don't need to say
3 another word about that.

4 Now, he's not required, anybody, anybody is not
5 required to testify in their own behalf. In our system,
6 you point the finger, you prove the case, right? And the
7 prosecutor speaks for the People of the State of New York,
8 and they have the burden of proving the case. You all
9 understand that? Does anybody have a problem with that?

10 Sir?

11 PROSPECTIVE JUROR #7: No.

12 MR. RODRIGUEZ: Do you have a problem with him
13 not testifying? Now, I'm going to say that in terms of
14 making the determination whether or not he's guilty or not.

15 PROSPECTIVE JUROR #7: No.

16 MR. RODRIGUEZ: Now, the Judge has told you not
17 to, but can you promise that if you're selected as a juror
18 you will not use the fact that he testifies or doesn't
19 testify in determining whether or not, just the fact that
20 he testifies or doesn't testify, in determining whether or
21 not he's guilty?

22 THE COURT: Just a moment. I think you ought to
23 rephrase.

24 MR. RODRIGUEZ: I heard myself. I will rephrase.

25 He has no obligation, the defendant has no

1 obligation. He may testify, may not testify. That's
2 something that will be decided by his attorney. But should
3 he not testify, would you promise me you will not use it
4 against him in any form or fashion?

5 PROSPECTIVE JUROR #8: No.

6 MR. RODRIGUEZ: If you're selected, will you use
7 it against him?

8 PROSPECTIVE JUROR #9: No.

9 MR. RODRIGUEZ: Will you?

10 PROSPECTIVE JUROR #4: No.

11 MR. RODRIGUEZ: Will you?

12 PROSPECTIVE JUROR #5: No.

13 MR. RODRIGUEZ: Will you?

14 PROSPECTIVE JUROR #6: No.

15 MR. RODRIGUEZ: Will you?

16 PROSPECTIVE JUROR #3: No.

17 MR. RODRIGUEZ: Is there anything about the
18 charge -- by the way, the charges, there's also going to be
19 allegations of a weapon used in this crime. Does that
20 affect your ability to be fair to my client?

21 PROSPECTIVE JUROR #1: No.

22 MR. RODRIGUEZ: Does that affect your ability?

23 PROSPECTIVE JUROR #2: No.

24 MR. RODRIGUEZ: You?

25 PROSPECTIVE JUROR #3: No.

1 MR. RODRIGUEZ: You?

2 PROSPECTIVE JUROR #4: No.

3 MR. RODRIGUEZ: You?

4 PROSPECTIVE JUROR #5: No.

5 MR. RODRIGUEZ: You?

6 PROSPECTIVE JUROR #6: No.

7 MR. RODRIGUEZ: You?

8 PROSPECTIVE JUROR #7: No.

9 MR. RODRIGUEZ: You?

10 PROSPECTIVE JUROR #8: No.

11 MR. RODRIGUEZ: You?

12 PROSPECTIVE JUROR #9: No.

13 MR. RODRIGUEZ: Now, if the prosecution does not
14 prove their case, that means the elements of the crime, and
15 yet you feel that something happened to the woman that you
16 don't like, in other words you don't like something that
17 happened but they haven't proved the case, you promise me
18 that you will not find my client guilty?

19 Can you promise that?

20 PROSPECTIVE JUROR #1: Yes.

21 MR. RODRIGUEZ: Can you promise that?

22 PROSPECTIVE JUROR #2: Yes.

23 MR. RODRIGUEZ: Can you promise is that?

24 PROSPECTIVE JUROR #3: Yes.

25 MR. RODRIGUEZ: Can you, sir?

1 PROSPECTIVE JUROR #4: Yes.

2 MR. RODRIGUEZ: Can you?

3 PROSPECTIVE JUROR #5: Yes.

4 MR. RODRIGUEZ: Can you?

5 PROSPECTIVE JUROR #6: Yes.

6 MR. RODRIGUEZ: Can you?

7 PROSPECTIVE JUROR #7: Yes.

8 MR. RODRIGUEZ: Can you?

9 PROSPECTIVE JUROR #8: Yes.

10 MR. RODRIGUEZ: Can you?

11 PROSPECTIVE JUROR #9: Yes.

12 MR. RODRIGUEZ: Is there any question you have of
13 me? It's late in the day, last chance to ask it.

14 Yes, sir?

15 PROSPECTIVE JUROR #9: Well, the DA brought it
16 up. Is DNA an absolute?

17 MR. RODRIGUEZ: That's a question that you'll
18 have to decide during the course of the case. All right?
19 You'll hear about that and you'll decide if it's important,
20 DNA evidence or not. Okay? And those are the things that
21 ultimately you're making a determination on.

22 Thank you very much.

23 THE COURT: If you will, these lawyers have to
24 make their choices, along with the defendant. I'm going to
25 ask everybody to step out. We'll advise you of your status

1 in a moment.

2 Everybody step out of the courtroom, please.

3 (Whereupon, the prospective jurors exited the
4 courtroom.)

5 THE COURT: Whenever you're ready, let Mr. LaRose
6 know.

7 (Brief pause in proceedings, after which the case
8 continued as follows:)

9 THE CLERK: All right, counselors, ready?
10 Panel for cause, People?

11 MS. GREGORY: No.

12 THE CLERK: Defense?

13 MR. RODRIGUEZ: No.

14 THE CLERK: Prospective Juror #1, peremptorily,
15 People?

16 MS. GREGORY: No.

17 THE CLERK: Defense?

18 MR. RODRIGUEZ: Yes.

19 THE CLERK: Defense challenges.

20 Prospective Juror #2, peremptorily, People?

21 MS. GREGORY: No.

22 THE CLERK: Defense?

23 MR. RODRIGUEZ: Yes.

24 THE CLERK: Prospective Juror #3, People?

25 MS. GREGORY: Yes.

1 THE CLERK: Prospective Juror #4, People?

2 MS. GREGORY: No.

3 THE CLERK: Defense?

4 MR. RODRIGUEZ: No.

5 THE CLERK: Mikhailda Bilwakesh becomes our 12th
6 juror.

7 First alternate chair, Prospective Juror #5,
8 People?

9 MS. GREGORY: No.

10 THE CLERK: Defense?

11 MR. RODRIGUEZ: What do we have?

12 THE CLERK: Two per chair, non-cumulative.

13 MR. RODRIGUEZ: And it's two chairs left, right?

14 THE CLERK: Well, the Court originally intended
15 to get two alternates. If we get it before, maybe we'll
16 get a third. You never know.

17 MR. RODRIGUEZ: Okay.

18 Alternate number one, no.

19 THE CLERK: Challenge or no challenge?

20 MR. RODRIGUEZ: No.

21 THE CLERK: Then Boris Broverman is acceptable?

22 MR. RODRIGUEZ: Yes.

23 THE CLERK: And becomes our first alternate
24 selected.

25 Chair number two, Prospective Juror #6, People?

1 MS. GREGORY: No.

2 THE CLERK: Defense?

3 MR. RODRIGUEZ: Yes.

4 THE CLERK: Miss Youngblood is challenged by the
5 defense.

6 THE CLERK: Second alternate chair, Prospective
7 Juror #7, People?

8 MS. GREGORY: No.

9 THE CLERK: Defense?

10 MR. RODRIGUEZ: No.

11 THE CLERK: Garrett Weathers is acceptable and
12 becomes our second alternate.

13 Third alternate chair, Prospective Juror #8,
14 People?

15 MS. GREGORY: No.

16 THE CLERK: Defense?

17 MR. RODRIGUEZ: As to Anthony?

18 THE COURT: Correct.

19 MR. RODRIGUEZ: Yes.

20 THE CLERK: Defense challenges.

21 Number nine, People?

22 MS. GREGORY: No.

23 THE CLERK: Defense?

24 MR. RODRIGUEZ: No.

25 THE CLERK: Kenneth Butler becomes our third

1 alternate.

2 THE COURT: With that, get those people selected
3 in, and the rest can return to Central Jury.

4 (Whereupon, the selected jurors entered the
5 courtroom.)

6 THE COURT: You have been selected to sit on this
7 case. You're going to be shown where the jury room is.

8 I'm going to ask you please be in the jury room
9 tomorrow morning at 10 o'clock. When you're all there,
10 you'll come out and you will be sworn as a trial jury, and
11 I will repeat these same rules I'm going to give you before
12 you leave.

13 You are to keep an open mind; not to form, or
14 express, any opinion as to the guilt or non-guilt of this
15 defendant until you've received all the evidence, you've
16 heard my closing, you've heard the attorneys' closing
17 arguments and my instructions on the law and you've gone
18 into the jury room to begin jury deliberations.

19 Do not discuss this case with anyone, not even
20 among yourselves, nor allow anyone to speak to you about
21 this case or in your presence about this case.

22 Don't visit any of the locations mentioned. Do
23 not try to investigate any facts on your own.

24 Don't read, watch or listen to any accounts of
25 this case should they be in the news media.

1 And don't surf the internet trying to get
2 information about this case or anybody involved with the
3 case.

4 Immediately report any attempts by anyone to
5 approach you or a fellow jurors about this case.

6 And until you're discharged, you're not to accept
7 compensation or discuss the acceptance of compensation for
8 supplying information.

9 With those rules in mind, follow the officers.
10 See you all tomorrow in the jury room, 10 o'clock, please.
11 You can expect a full day.

12 If you have a question, we'll take it in a
13 moment.

14 Just see what it is and have him stand by.

15 (Whereupon, the selected jurors exited the
16 courtroom.)

17 COURT OFFICER: The teacher teaches a class from
18 1:00 to 4:00 on Tuesday and Thursday, which he failed to
19 mention.

20 THE COURT: Bring him in.

21 (Whereupon, Juror #12 entered the courtroom.)

22 THE COURT: Your name, please.

23 JUROR #12: Mikhailda Bilwakesh.

24 THE COURT: There is a problem with our schedule.
25 You teach a class when?

1 JUROR #12: Tuesdays and Thursdays at one
2 o'clock.

3 THE COURT: All right. On Tuesday we would
4 probably give this case to the jury. Is it possible for
5 you to arrange for someone else to teach that class?

6 JUROR #12: So I'd have to arrange for tomorrow
7 as well?

8 THE COURT: Yes, sir.

9 JUROR #12: Thursday and Tuesday?

10 THE COURT: Yes, sir.

11 JUROR #12: It would be difficult. I suppose I
12 could.

13 THE COURT: Well, you tell me. The question
14 becomes really if you can't do it, whether it would affect
15 your ability to sit. Because you have been selected, you
16 are the 12th juror.

17 JUROR #12: I can sit. I can get somebody to
18 cover the class.

19 THE COURT: When would you know? For example, in
20 terms of tomorrow, when would you know? I guess you would
21 know tonight?

22 JUROR #12: Yeah. I mean, I'd have to go and try
23 to talk to them now. I've never done jury duty. I don't
24 even know. You know, I don't get sick often either.

25 THE COURT: For the moment, why don't you just

1 take him to the robing room. Let him reach out to his
2 employer right now and let's see.

3 Just follow the officer.

4 (Whereupon, Juror #12 exited the courtroom.)

5 THE COURT: In the interim, while he's doing
6 that, let's see if we can deal with the Rosario. I believe
7 you had something, Mr. Rodriguez?

8 MR. RODRIGUEZ: Yes, your Honor. There were some
9 redactions in some pages and some pages I thought may have
10 been missing from the file that was turned over to me.

11 THE COURT: Well, the jury is sworn. I mean, the
12 jury is not sworn but it's selected now.

13 Can you give him unredacted copies, ma'am, or
14 help him?

15 MS. GREGORY: Your Honor, there was a portion of
16 the medical records that was redacted, which I believe was
17 redacted for rape shield reasons, and that's why that was
18 redacted.

19 THE COURT: Is it an address or something?

20 MS. GREGORY: No. It was questions that were
21 asked of her. I could show it to the Court.

22 THE COURT: Well, let me see it.

23 (Handed.)

24 THE COURT: Something about prior sexual
25 activity?

1 MS. GREGORY: Right. It's question number 15.

2 THE COURT: Okay. All right. It does relate to
3 prior sexual activity, unrelated to this alleged incident.
4 All right.

5 MS. GREGORY: And then additionally, the way that
6 the hospital numbers these records, the first page says
7 step one, and then it says step 13. I don't have any other
8 steps.

9 THE COURT: In between, you mean?

10 MS. GREGORY: Right.

11 THE COURT: The record you have, is it certified
12 to be an accurate copy?

13 MS. GREGORY: These records, these pink pages,
14 the page you have and these two pages here come directly
15 from an envelope on the rape kit.

16 THE COURT: Well, this one is signed by the
17 examining physician. Is that going to be the individual
18 who's going to come in?

19 MS. GREGORY: No. The physician who examined
20 her, the nurse who examined her is coming in.

21 THE COURT: All right. Then before she
22 testifies, why don't you let her look at this and find out
23 whether this is in fact the entire record.

24 MS. GREGORY: Right. It's my understanding
25 there's nothing further, but I will double check with her.

1 MR. RODRIGUEZ: Okay. I just --

2 MS. GREGORY: I mean, the steps are odd but --

3 MR. RODRIGUEZ: And the other thing is if there
4 are steps two through 12, which appear to be missing, I'd
5 like to know what they are. Because I'd like to be able to
6 see whether or not there's something that they did or
7 didn't do.

8 THE COURT: I don't disagree with you, counsel.
9 But she won't know that until tomorrow, when she speaks to
10 the nurse.

11 MR. RODRIGUEZ: Okay.

12 THE COURT: But the reference to 15 clearly
13 relates to any previous sexual activity, and clearly at
14 this point is not related to the alleged incident.

15 MR. RODRIGUEZ: Okay. I just didn't know what
16 that was.

17 THE COURT: You can hand this back to the DA.

18 MR. RODRIGUEZ: Now, is there any reason why I
19 couldn't have the address and date of birth of the
20 complaining witness and Tammy Little?

21 THE COURT: Well, you won't get the address of
22 Miss Little.

23 MR. RODRIGUEZ: I don't want the address. I want
24 the date of birth.

25 THE COURT: Do you have a date of birth for her?

1 MS. GREGORY: I don't have it, your Honor.

2 THE COURT: When is she scheduled to testify?

3 MS. GREGORY: Probably not until Monday morning.

4 THE COURT: Please get in touch with her.

5 MS. GREGORY: As soon as I get it --

6 THE COURT: I'd like her on Friday, but if you're
7 going to bring her on Monday, I mean get an address for
8 him, please, in time for him to do his criminal record
9 search.

10 MR. RODRIGUEZ: I could also have one for Miss
11 Colon also?

12 THE COURT: If one exists.

13 I'm sorry. First of all, ma'am, are you aware of
14 any criminal record as to Miss Colon?

15 MS. GREGORY: No, none, your Honor.

16 THE COURT: Would you make sure that he gets the
17 date of birth, please.

18 MS. GREGORY: Okay.

19 THE COURT: When is she scheduled to testify?
20 Tomorrow?

21 MS. GREGORY: Tomorrow.

22 THE COURT: Okay.

23 Anything else?

24 MR. RODRIGUEZ: Yeah, there are, your Honor.

25 I have a complaint follow-up, number nine. I've

1 got continued on page two, but I don't have a page two.

2 THE COURT: All right. Would you allow the
3 assistant to look at what you do have and maybe she can
4 compare it with what she has.

5 MR. RODRIGUEZ: Sure.

6 MS. GREGORY: This is two.

7 MR. RODRIGUEZ: Can you make me a copy of that?

8 MS. GREGORY: Okay.

9 MR. RODRIGUEZ: I think I have a copy of that.

10 MS. GREGORY: You think you do?

11 MR. RODRIGUEZ: I see what it is. I think I have
12 a copy of that.

13 THE COURT: All right.

14 MR. RODRIGUEZ: I do have a copy.

15 THE COURT: Yes, sir. I can see it from here.

16 MR. RODRIGUEZ: I have a copy.

17 MR. RODRIGUEZ: Doesn't look the same, that's why
18 I asked.

19 And there is one other page. And I know she
20 doesn't have this information right now. I understand her
21 copy of the uniform system arrest sheet is like mine.

22 THE COURT: I'm sorry. Uniform?

23 MR. RODRIGUEZ: Yeah. Yes, your Honor. It's
24 this document.

25 THE COURT: Is that something new now?

1 MR. RODRIGUEZ: Yes, it is.

2 THE COURT: Uniform arrest sheet?

3 MR. RODRIGUEZ: It used to be the on-line booking
4 sheet. It's the old on-line booking sheet.

5 THE COURT: Yes, sir. What's the problem?

6 MR. RODRIGUEZ: At the bottom of it it's missing
7 some of the --

8 THE COURT: Do you have your original?

9 MS. GREGORY: I don't have the original, your
10 Honor. But the on-line booking system arrest work sheet
11 that was right before that is the handwritten copy of what
12 this preprinted form is. These two pages.

13 MR. RODRIGUEZ: If I took this information, it
14 would be down here?

15 MS. GREGORY: Right.

16 MR. RODRIGUEZ: Okay. All right.

17 So on the representation of counsel, I'll just
18 wait until that time when the detective takes the stand.

19 THE COURT: You got Litwin coming in. So if he's
20 got his file, you can look at that too as well.

21 MR. RODRIGUEZ: All right.

22 THE COURT: Anything else in terms of Rosario?

23 MR. RODRIGUEZ: I think that's it, your Honor.
24 At this point I don't see anything else that I have a
25 problem with at this point.

1 THE COURT: What about our juror now? He's back
2 now?

3 COURT OFFICER: Yes.

4 (Whereupon, Juror #12 entered the courtroom.)

5 THE COURT: Just have a seat, sir.

6 If you will, your name, again.

7 JUROR #12: Mikhailda Bilwakesh.

8 THE COURT: What information do you have for us?

9 JUROR #12: I wasn't able to get in touch with
10 anybody at the university. They all left for the day. So
11 my plan is to try and come tomorrow and I'll have to make
12 up those courses. I'll make up those classes or get
13 somebody to cover those two lecture periods, which should
14 be possible to do.

15 THE COURT: All right. We'll make sure that in
16 the morning when you arrive we'll make a phone available to
17 you so you can reach out to somebody to make sure. Okay?

18 JUROR #12: Okay.

19 THE COURT: We'll see you tomorrow morning then.

20 JUROR #12: Okay.

21 THE COURT: Ten o'clock, please.

22 JUROR #12: Come straight up to the 20th floor?

23 THE COURT: He's going to tell you where to come.
24 Just follow his instructions.

25 JUROR #12: All right. Thank you.

1 (Whereupon, Juror #12 exited the courtroom.)

2 THE COURT: Is there anything else, either side?

3 MS. GREGORY: No, your Honor.

4 THE COURT: All right. Then I'll see you all
5 tomorrow about 10 o'clock.

6 (Whereupon, the trial of the action was adjourned
7 to Thursday, October 27, 2005.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25